

REPORT

JOINT PARLIAMENTARY COMMITTEE
(JPC)
TO EXAMINE MATTERS RELATING TO
ALLOCATION AND PRICING OF TELECOM LICENCES AND SPECTRUM
(FIFTEENTH LOK SABHA)

Presented to Hon'ble Speaker on

Presented to Lok Sabha on

Laid on the Table of Rajya Sabha on



LOK SABHA SECRETARIAT
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Volume-II*

* Minutes of the Sitzings of the Committee were presented/laid along with the Report but not printed. Five copies placed in Parliament Library.

COMPOSITION OF THE JOINT PARLIAMENTARY COMMITTEE TO EXAMINE
MATTERS RELATING TO ALLOCATION AND PRICING OF
TELECOM LICENCES AND SPECTRUM

COMPOSITION

Shri P.C. Chacko — *Chairman*

MEMBERS

Lok Sabha

2. Shri V. Aruna Kumar*
3. Shri Ijyaraj Singh[#]
4. Shri Jai Prakash Agarwal
5. Shri Deepender Singh Hooda
6. Shri Bhakta Charan Das^{@@}
7. Dr. Nirmal Khatri
8. Sardar Partap Singh Bajwa^{^^}
9. Shri T.R. Baalu
10. Shri Kalyan Banerjee
11. Shri Jaswant Singh
12. Shri Yashwant Sinha
13. Shri Harin Pathak
14. Shri Gopinath Munde
15. Shri Sharad Yadav
16. Shri Dara Singh Chauhan
17. Shri Shailendra Kumar[%]
18. Shri Gurudas Dasgupta
19. Shri Arjun Charan Sethi
20. Dr. M. Thambidurai

Rajya Sabha

21. Shri Ananda Bhaskar Rapolu^{##}
22. Shri P. Bhattacharya[^]
23. Shri Praveen Rashtrapal^{**}
24. Dr. Ashok S. Ganguly ■
25. Dr. Yogendra P. Trivedi
26. Shri Dharmendra Pradhan^{**}
27. Shri Ravi Shankar Prasad^{**}
28. Shri Ramchandra Prasad Singh
29. Shri Satish Chandra Misra
30. Shri Sitaram Yechuri[@]

SECRETARIAT

1. Shri S. Bal Shekar	—	<i>Secretary-General</i>
2. Shri Cyril John	—	<i>Director</i>
3. Shri J.M. Baisakh	—	<i>Director</i>
4. Shri Dhiraj Kumar	—	<i>Additional Director</i>
5. Shri Satya Vijay Ram	—	<i>Joint Director</i>
6. Shri Sreekanth S.	—	<i>Committee Officer</i>
7. Shri Surender Chaudhary	—	<i>Senior Executive Assistant</i>
8. Shri Pramod Kumar Sharma	—	<i>Executive Assistant</i>
9. Shri Vijay Mishra	—	<i>Executive Assistant</i>

* (i) Shri V. Kishore Chandra S. Deo, MP (04.03.2011 to 12.07.2011), (ii) Shri Vijay Bahuguna, MP (04.08.2011 to 30.04.2012), and (iii) Dr. Shashi Tharoor, MP (22.05.2012 to 01.11.2012) were members of the Committee for the period indicated against each. Shri V. Aruna Kumar, MP appointed w.e.f. 26.11.2012.

Appointed w.e.f. 04.08.2011 vice Shri Paban Singh Ghatowar, MP, who resigned from the membership of the Committee w.e.f. 12.07.2011.

^ Shri P. Bhattacharya, MP appointed w.e.f. 29.08.2013 vice Dr. E.M. Sudarshana Natchiappan, MP resigned from the JPC w.e.f. 17.06.2013, Dr. E.M. Sudarshana Natchiappan, MP was appointed w.e.f. 07.09.2011 vice Smt. Jayanthi Natarajan, MP who resigned from the membership of the Committee w.e.f. 12.07.2011.

@ Reappointed w.e.f. 07.09.2011.

** S/Shri Praveen Rashtrapal, S.S. Ahluwalia and Ravi Shankar Prasad, MPs retired from the membership of Rajya Sabha w.e.f. 02.04.2012. S/Shri Praveen Rashtrapal, Ravi Shankar Prasad, MPs reappointed w.e.f. 22.05.2012. Shri Dharmendra Pradhan, MP appointed w.e.f. 22.05.2012 vice Shri S.S. Ahluwalia, MP who retired.

% Appointed w.e.f. 22.05.2012 vice Shri Akhilesh Yadav, MP resigned from membership of Lok Sabha w.e.f. 02.05.2012.

Shri Ananda Bhaskar Rapolu, MP appointed w.e.f. 06.09.2012 vice Prof. P.J. Kurien, MP retired from the membership of Rajya Sabha w.e.f. 01.07.2012.

@@ Appointed w.e.f. 26.11.2012 vice Shri Manish Tewari, MP who resigned from the membership of the Committee w.e.f. 29.10.2012.

^^ Appointed w.e.f. 26.11.2012 vice Shri Adhir Ranjan Chowdhury who resigned from the membership of the Committee w.e.f. 05.11.2012.

■ Dr. Ashok S. Ganguly, MP appointed w.e.f. 29.08.2013 vice Shri Tiruchi Siva, retired from the Membership of Rajya Sabha w.e.f. 24.07.2013.

LIST OF ABBREVIATIONS USED IN THE REPORT

AGI	Attorney General of India
AGR	Adjusted Gross Revenue
AIP	Administrative Incentive Pricing
ARPU	Average Revenue Per Unit
AUSPI	Association of Unified Telecom Service Providers of India
BICP	Bureau of Industrial Cost & Pricing
BSO	Basic Service Operators
BSP	Basic Service Provider
BTS	Basic Telecom Service
BSNL	Bharat Sanchar Nigam Limited
C&AG	Comptroller and Auditor General
CBI	Central Bureau of Investigation
CDMA	Code Division Multiple Access
CDoT	Centre for Development of Telematics
CMSP	Cellular Mobile Service Providers
CMTS	Cellular Mobile Telecom Service
COAI	Cellular Operators Association of India
CMSO	Cellular Mobile Service Operators
CVC	Chief Vigilance Commission
DEA	Department of Economic Affairs
DHQ	District Headquarters
DoT	Department of Telecommunications
DTH	Direct to Home
DTS	Department of Telecommunication Services
ED	Enforcement Directorate
EGoM	Empowered Group of Ministers
FSP	Fixed Service Provider
FDI	Foreign Direct Investment
FCFS	First Come First Served
FBG	Financial Bank Guarantee
FIPB	Foreign Investment Promotion Board
GoI	Government of India
GoM	Group of Ministers
GoT-IT	Group on Telecom and Information Technology Convergence
GSM	Global System for Mobile Communication
ICICI	Industrial Credit and Investment Corporation of India

ICT	Information and Communications Technology
ILD	International Long Distance
IRR	Internal Rate of Return
ISDN	Integrated Services Digital Network
ISP	Internet Service Provider
ITU	International Telecommunication Union
LoI	Letter of Intent
MHz	Megahertz
MLJ	Ministry of Law & Justice
MTNL	Mahanagar Telephone Nigam Limited
MoA	Memorandum of Association
MoC & IT	Ministry of Communications & Information Technology
MoF	Ministry of Finance
MoCA	Ministry of Corporate Affairs
Moi&B	Ministry of Information and Broadcasting
NFAP	National Frequency Allocation Plan
NLDS	National Long Distance Service
NPA	Non Performing Asset
NPV	Net Present Value
NTP	National Telecom Policy
PCO	Public Call Office
PMO	Prime Minister's Office
PSTN	Public Switching Telecom Network
PBG	Performance Bank Guarantee
SACFA	Standing Advisory Committee on Radio Frequency Allocation
SDCA	Short Distance Charging Area
TC	Telecom Commission
TDMA	Time Division Multiple Access
TDSAT	Telecom Disputes Settlement and Appellate Tribunal
ToR	Terms of Reference
TRAI	Telecom Regulatory Authority of India
TEC	Telecommunication Engineering Centre
UAS	Unified Access Services
UASL	Unified Access Service Licence
ULR	Unified Licencing Regime
USO	Universal Service Obligation
VPT	Village Public Telephone
VSAT	Very Small Aperture Terminal
VSNL	Videsh Sanchar Nigam Limited
WLL	Wireless in Local Loop
WLL(M)	Wireless in Local Loop relating to limited mobility
WPC	Wireless Planning and Coordination
WRC	World Radio Communication Conference

INTRODUCTION

1. I, the Chairman of the Joint Committee to examine matters relating to Allocation and Pricing of Telecom Licences and Spectrum, having been authorized by the Committee to submit the Report on their behalf, present the Report of the Committee.

2. The Committee constituted on 4 March, 2011 were asked to present a Report to Parliament by the end of Monsoon Session 2011. In view of the extensive period covered in the terms of reference and intricate nature of the inquiry, the Committee could not complete their work by the scheduled time. They sought five extensions *i.e.*, upto Budget Session 2012, Monsoon Session 2012, Budget Session 2013, Monsoon Session 2013 and finally upto the subsequent Session of Parliament.

3. The Committee held 57 sittings in all. The Committee have had briefings, oral evidence and interactions with representatives of Ministry of Communications & Information Technology (Department of Telecommunications), Ministry of Finance (Departments of Revenue & Economic Affairs), Telecom Regulatory Authority of India, Comptroller & Auditor General of India and Central Bureau of Investigation. The Committee were also enlightened by the views of the Attorney General of India. The list of non-official witnesses and Associations, whose oral evidence was taken by the Committee and individuals who submitted written replies to questionnaires, is given in the Annexure.

4. The total duration of the sittings of the Committee was 155 hours approximately. A Verbatim record of the oral evidence before the Committee was kept. This runs into 2670 pages. The minutes of the sittings of the Committee form Volume-II of this Report.

5. Committee in their sitting held on 27 September, 2013 considered the draft Report. The question of adoption of the draft Report was put to vote and the same was adopted by a majority, where 16 members voted in favour of the Report and 11 voted against. Three members were absent. Some members submitted Minute of Dissent. Remark/comments/insinuations in the Minute of Dissent which were found not to be in conformity with Rule 303(5) have been expunged under Direction 91(1) of the Directions by the Speaker, Lok Sabha. The Minute of Dissent have been appended to the Report.

6. As Chairman of the Committee, I would like to place on record my heartfelt gratitude to the Members including the former Members of the Committee who ceased to be Members at some point of time *viz.* Shri V. Kishore Chandra S. Deo, Shri Paban Singh Ghatowar, Smt. Jayanthi Natarajan, Shri S.S. Ahluwalia, Shri Vijay Bahuguna, Shri Akhilesh Yadav, Prof. P.K. Kurien, Dr. Shashi Tharoor, Shri Manish Tewari, Shri Adhir Ranjan Chowdhury, Dr. E.M. Sudarshana Natchiappan and Shri Tiruchi Siva. They all rendered yeoman service through active participation in the Committee's deliberations and their valuable suggestions have gone a long way in preparation of this report.

7. The Committee also express their thanks to the representatives of various Ministries/ Departments, Associations and individuals for placing before them the material and information asked by them relating to the terms of reference of the Committee and for giving evidence before them.

8. The Secretarial assistance to the Committee was provided by the Lok Sabha Secretariat and a special Cell had been created for this purpose. The Committee place on record their deep appreciation for the commendable work done by S/Shri S. Bal Shekar, Secretary-General, Lok Sabha (the then Secretary); Cyril John, Director; J.M. Baisakh, Director; Dhiraj Kumar, Additional Director; Satya Vijay Ram, Joint Director; Sreekanth S., Executive Officer; Surender Chaudhary, Senior Eexecutive Assistant; Tarvinder Pal Singh, Senior Personal Assistant; Pramod Kumar Sharma, Executive Assistant; Vijay Mishra, Executive Assistant and Ravi Kumar, Personal Assistant. The Committee Secretariat was also assisted by S/Shri Umrao Singh, Stenographer; Chetan Prakash, Junior Clerk; Jagdish Kaul, Chamber Attendant; Gaje Singh Rawat, Chamber Attendant; Ashok, Attendant Grade-II; Surendra Singh, Attendant Grade-III and Dinesh Bharti, Sessional Attendant.

NEW DELHI;
25 October, 2013
03 Kartika, 1935 (Saka)

P.C. CHACKO,
Chairman,
Joint Parliamentary Committee to examine Matters relating to
Allocation and Pricing of Telecom Licences and Spectrum.

1. LIST OF NON-OFFICIAL WITNESSES WHO TENDERED ORAL EVIDENCE

Former Secretaries of the Ministry of Communications & Information Technology (Department of Telecommunications)

- (i) Shri A.V. Gokak
- (ii) Shri Anil Kumar
- (iii) Shri Shyamal Ghosh
- (iv) Shri Vinod Vaish
- (v) Shri Nripendra Mishra
- (vi) Shri Brijesh Kumar
- (vii) Dr. J.S. Sarma
- (viii) Shri D.S. Mathur
- (ix) Shri Siddhartha Behura
- (x) Shri P.J. Thomas

Former Chairmen of the Telecom Regulatory Authority of India (TRAI)

- (i) Justice S.S. Sodhi
- (ii) Shri M.S. Verma
- (iii) Shri Pradip Baijal
- (iv) Shri Nripendra Mishra

Associations

- (i) Cellular Operators Association of India (COAI)
- (ii) Association of Unified Telecom Service Providers of India (AUSPI)

Other Witnesses

- (i) Shri D. Subbarao, former Finance Secretary and Governor, Reserve Bank of India
- (ii) Shri K.M. Chandershekhar, former Cabinet Secretary
- (iii) Smt. Sindhushree Khullar, former Additional Secretary, Ministry of Finance (Department of Economic Affairs)
- (iv) Shri R.P. Singh, former Director General, Audit (Post & Telecommunications)

2. LIST OF INDIVIDUALS WHO SUBMITTED WRITTEN REPLIES

- (i) Shri A. Raja, MP, former Union Minister for Communications and Information Technology
- (ii) Smt. Manju Madhvan, former Member (Finance), Telecom Commission
- (iii) Shri Vinod Mehta, Editorial Chairman, Outlook Magazine

REPORT

CHAPTER I

INTRODUCTORY

During the period 2008-2010 there were reports relating to huge loss having been allegedly caused to the exchequer on account of irregularities committed in the issuance of 122 Unified Access Service Licences in 2008 at a price discovered in 2001. The Central Vigilance Commission (CVC) looked into complaints regarding the First-Come-First-Served policy in respect of allotment of Unified Access Service License (UASL) by the Department of Telecommunications. On 12 October, 2009, the CVC sent its report to the Central Bureau of Investigation (CBI) to investigate into the matter to establish the criminal conspiracy in the allocation of 2G Spectrum under UASL policy of the Department of Telecommunications.

1.2 The Comptroller and Auditor General of India also submitted a Performance Audit Report (No. 19 of 2010-11) dated 8 November, 2010 on the 'Issue of Licenses and Allocation of 2G Spectrum' which projected a presumptive loss to the public exchequer ranging from Rs. 57,666 crores to Rs. 1,76,645 crores.

1.3 Concerned over the above developments, a Motion regarding the constitution of a Joint Committee to examine matters relating to Allocation and Pricing of Telecom Licences and Spectrum from 1998 to 2009 was adopted in the Lok Sabha on 24 February, 2011 and the Motion was concurred to in the Rajya Sabha on 1 March, 2011. Accordingly, the Joint Parliamentary Committee were constituted w.e.f. 4 March, 2011 comprising of 20 Members of Parliament from Lok Sabha and 10 Members of Parliament from Rajya Sabha. Shri P.C. Chacko, MP was appointed as Chairman of the Committee. The Committee were asked to submit their report to the Lok Sabha by the end of Monsoon Session, 2011.

1.4 Terms of Reference for the Joint Committee as announced in the above said motion are as under:

- (i) To examine policy prescriptions and their interpretation thereafter by successive Governments, including decisions of the Union Cabinet and the consequences thereof in the allocation and pricing of telecom licenses and spectrum from 1998 to 2009;
- (ii) To examine irregularities and aberrations, if any, and the consequences thereof in the implementation of Government decisions and policy prescriptions from 1998 to 2009; and
- (iii) To make recommendations to ensure formulation of appropriate procedures for implementation of laid down policy in the allocation and pricing of telecom licenses.

1.5 The Committee in all held 57 sittings. At their first sitting held on 24 March, 2011, the Committee decided that the general rules as applicable to Parliamentary Committees shall apply to the Committee with variations, if any, made under the authority of the Speaker, Lok Sabha. It was also decided to issue a public notice inviting comments and views from the general public, users of telecom services and experts. The Committee in their sitting held on 7 July, 2011 decided to examine all the former Secretaries of Department of Telecommunications and former Chairmen, Telecom Regulatory Authority of India (TRAI) in the sequence in which they had held office.

1.6 The Committee have examined 10 former Secretaries of Department of Telecommunications and 4 former Chairmen of TRAI. The Committee had briefings and oral evidence by the representatives of Department of Telecommunications, Telecom Regulatory Authority of India, Comptroller & Auditor General of India, Central Bureau of Investigation and Ministry of Finance (Departments of Revenue & Economic Affairs) on issue of Licenses and Allocation of 2G spectrum. In the course of examination of the subject, the Committee was enlightened by the views of the Attorney General of India. The representatives of two associations in the telecom sector, viz. Cellular Operators Association of India (COAI) and Association of Unified Telecom Service Providers of India (AUSPI) also appeared before the Committee for oral evidence. The Committee also took evidence of Shri K.M. Chandrasekhar, former Cabinet Secretary and Smt. Sindhushree Khullar, former Additional Secretary, Ministry of Finance (Department of Economic Affairs) and Shri R.P. Singh, former Director General (Posts & Telecommunications). The Committee also sought written replies from Smt. Manju Madhvan, former Member (Finance), Telecom Commission; Shri Vinod Mehta, Editorial Chairman, Outlook Magazine and Shri A. Raja, MP and former Minister of Communications and Information Technology. In addition to this, the Committee also took note of the views expressed by the Telecom Service Providers, experts and general public who submitted memoranda before them.

1.7 Due to extensive period covered under the terms of reference and the magnitude and complexities of the issues involved, the Committee sought five extensions of time for presentation of the Report, the first upto the last day of Budget Session 2012, Monsoon Session 2012, Budget Session 2013, Monsoon Session 2013 and finally upto the subsequent Session of Parliament.

1.8 The period from 1998 to 2009 has been very eventful in the history of the telecom sector in the country. The Committee in their deliberations have looked into the entire gamut of issues concerning telecom licencing covering the period from 1998 to 2009, which include issuance of licences, allocation of spectrum, licence fee, spectrum charges, etc.

1.9 For the facility of reference, the Report has been divided into 10 Chapters. The minutes of the sittings of the Committee have been prepared and have been laid on the Table of the House and the same have been kept in Parliament Library.

1.10 In the successive chapters, the Committee have examined the extant policies and the manner in which the same were implemented by the Government. The findings of the Committee regarding policy aberrations and irregularities have been detailed in Chapter-X of the Report captioned 'Observations and Recommendations'.

CHAPTER II

THE ERA OF NATIONAL TELECOM POLICY-1994

National Telecom Policy-1994 — Policy Prescriptions

2.1 The first National Telecom Policy (NTP-1994) was announced by the Government on 13 May, 1994 with the objectives of providing telephone on demand, provision of world-class services at reasonable prices and universal availability of basic telecom services to all villages. Looking at the economic growth, and the re-assessed demand, the targets in VIII Plan were revised in NTP-1994 as follows:—

- Telephone should be available on demand by 1997.
- All villages should be covered by 1997.
- In the urban areas a PCO should be provided for every 500 persons by 1997.
- All value-added services available internationally should be introduced in India to raise the telecom services in India to international standards well within the VIII Plan period, preferably by 1996.

2.2 NTP-1994 recognised that the required resources for achieving these targets could not be made available only out of Government sources and private investment and involvement of the private sector was required to bridge the large resource gap.

2.3 NTP-1994 also provided for continuing the policy of permitting companies registered in India to operate licences for value added services including cellular mobile telephone services through a system of tendering subject to the following criteria for their selection:

- Track record of the company;
- Compatibility of the technology;
- Usefulness of the technology being offered for future development;
- Protection of national security interests;
- Ability to give the best quality of service to the consumer at the most competitive cost; and
- Attractiveness of the commercial terms to the Department of Telecommunications (DoT).

2.4 With a view to supplement the effort of the Department of Telecommunications in providing telecommunication services to the people, NTP-1994 provided that the companies registered in India would be allowed to participate in the expansion of the telecommunication network in the area of basic telephone services also. These companies will be required to maintain a balance in their coverage between urban and rural areas.

2.5 In relation to implementation of this policy, it was stated that suitable arrangements ought to be made to (a) protect and promote the interests of the consumers and (b) ensure fair competition.

Award of Licences under NTP-1994

2.6 In consonance with requirement for private investment/involvement to bridge the resource gap, private sector participation was invited in a phased manner for granting licences. In the first phase, in November, 1994 the Department of Telecommunications issued eight Cellular Mobile Telephone Services (CMTS) licences, two in each of the four Metro cities of Delhi, Mumbai, Kolkata and Chennai for a period of 10 years. The 1994 licensees were selected based on rankings achieved by them on the technical and financial valuation based on parameters (Beauty Parade) set out by the Department of Telecommunications in the tender and were required to pay a fixed licence fee for initial three years and subsequently based on the number of subscribers subject to minimum commitment mentioned in the tender document and licence agreement. The 1994 licences issued by the Department of Telecommunications mentioned that a cumulative maximum of up to 4.5 MHz in the 900 MHz bands would be permitted based on appropriate justification. There was no separate upfront charge for the allocation of spectrum to the licensees, who only paid annual spectrum usage charges, which would be subject to revision from time to time and which under the terms of the licence bore the nomenclature "licence fee and royalty".

2.7 In the second phase, from December, 1995 to April, 1998, 34 CMTS licences (28 in December, 1995, 5 in 1996 & 1 in 1998) were granted based on auction for 18 Telecommunication Circles for a period of 10 years. The 1995 licences issued by the Department of Telecommunications through auction held in 1995 mentioned that a cumulative maximum of up to 4.4 MHz in the 900 MHz bands would be permitted based on appropriate justification. There was no separate upfront charge for the allocation of spectrum to the licensees, who only paid annual spectrum usage charges, which will be subject to revision from time to time and which under the terms of the licence bore the nomenclature "licence fee and royalty".

2.8 In January, 1995 bids were also invited for Basic Telephone Service (BTS) licences with the licence fee payable for a period of 15 years. Under the terms of the BTS Licences, a licensee could provide fixed line basic telephone services as well as wireless basic telephone services. Six licences were granted in the year 1997-98 by way of auction through tender for providing basic telecom services. The licence terms, *inter-alia*, provided that based on the availability of the equipment for Wireless in Local Loop (WLL), in the world market, the spectrum in bands specified therein would be considered for allocation subject to the conditions mentioned therein. There was no separate upfront charge for allocation of spectrum and the licensees offering the basic wireless telephone service were required to pay annual spectrum usage charges, which under the terms of the licence bore the nomenclature "licence fee and royalty".

2.9 In the duopoly regime of 1st & 2nd CMTS licences, the Department of Telecommunications reserved the right to operate the services in the area directly or through a designated public authority. Mahanagar Telephone Nigam Limited (MTNL) was granted CMTS licence for Delhi and Mumbai service areas w.e.f. October 10, 1997. However, the entry of MTNL as CMTS licensee was challenged by the then existing CMTS licensees in the Courts and stay was granted.

Implementation of Licencing Regime

2.10 The Committee desired to know the major problems faced by the licensees in the initial years of operation and the challenges encountered by the Department in implementing the newly introduced licensing regime. In evidence, Shri A.V. Gokak, the then Secretary, Department of Telecommunications informed the Committee that there was no movement on the policy making front, only routine expansion was going on. The licensees were not signing the licence agreements which were given to them sometime around January, 1996 because they had

certain reservations. According to the Secretary, three major areas in the licence agreement where the licensees had objections were identified, viz: (a) provision for arbitration, (b) issue of external commercial borrowings, (c) force majeure clause, and (d) the assignability of the licence. In regard to first three problems, these were resolved through discussions. In respect of the fourth problem, he mentioned that no foreign lender was prepared to come forward unless an assignability was introduced. Assignability of licence meant that the licence itself gets transferred in the event of a default or it can be treated as an asset by itself and that is why amortisation of the licence fee was provided in the Budget. Shri Gokak mentioned that the licence agreement was accordingly amended to provide for assignability around September or October, 1997 with the approval of the Cabinet.

Licence Fee Default

2.11 The then Secretary, Shri Gokak informed the Committee that apart from the aforesaid administrative problems which were resolved through an open transparent process, the financial problems of the service providers persisted. About the default in payment of licence fee, he mentioned that the basic service providers had not even started unrolling the network, but they paid the licence fee, whatever was expected of them before signing the licence agreement. The problem was about the cellular operators, both in Metros and Circles, but more in Circles as compared to the Metros.

2.12 The report of the Comptroller and Auditor General of India (C&AG), Post and Telecommunications (No. 6 of 2000) pointed out that most of the licensees violated the financial conditions by not paying dues to the Department of Telecommunications and also failing to adhere to other conditions of the agreement such as submission of financial bank guarantees, payment of Wireless Planning and Co-ordination (WPC) licence fee and royalty, opening of escrow accounts, etc. The Audit report also mentioned that the licensees did not adhere to the prescribed payment schedule as laid down in the licence agreements. The Circle cellular licensees did not pay licence fee on a regular basis from second year (March, 1997) onwards. Even the Metro cellular operators stopped paying licence fee regularly from the fourth year onwards. The six licensees of basic telephone services who signed licence agreement during 1997-98 also defaulted in payment of licence fee from the second year of their licence agreement.

2.13 The Committee have been informed that repeated requests were received from operators and industry for grant of certain reliefs due to non-viability of projects. Records made available to the Committee indicated that Cellular Operators Association of India (COAI) initially represented to the Department of Telecommunications on 29 July, 1997 citing the problems faced by the industry and sought reliefs. Subsequently, communications from COAI were also received in the Department pressing for demands of the industry. The demands raised in regard to circle licences were as follows:—

- Deferment in payment of licence fee for the current year;
- A two years moratorium on licence fee payment without affecting overall Net Present Value (NPV) on account of severe problems of cash flow; and
- For increasing the validity of the licence period from 10 years to 15 years by keeping the NPV of the licence fee to be paid unchanged (i.e. extension of licence at no extra cost to them). The industry represented that even moratorium for a period of two years will not provide a long term solution to the problem of viability of the projects themselves. The COAI in subsequent representations requested that the extended period of licence should be 20 years.

2.14 According to the cellular industry, the financial viability of the projects had been adversely affected because of the following facts:

- The initial projections made by them with regard to the growth in the number of subscribers had not materialised.
- In addition to slower growth rate of customer base, the usage in terms of air time which directly contribute to revenue had also been much less than anticipated.
- In view of above, the industry pleaded that the revenue that was generated was not sufficient to meet the quantum of the licence fee.

Review of the Financial Health of Cellular Industry

2.15 In the wake of the demands from the cellular operators, it was felt by the Department of Telecommunications that the health of the cellular industry was needed to be studied by an expert agency and further measures considered on the basis of its outcome. In the review meeting taken by the Prime Minister on 1 November, 1997 in which the Minister of Communications was also present, it was decided that the study of the health of the cellular industry might be referred to Telecom Regulatory Authority of India (TRAI) which had an advisory role under the TRAI Act. In the meeting taken by Shri A.V. Gokak, Secretary, Department of Telecommunications and also Chairman, Telecom Commission (TC) on 17 December, 1997, it was felt that TRAI may take longer time for the said study and, therefore, it was decided to entrust this study to some expert Government agency. In this context, the Committee enquired as to how the Chairman, Telecom Commission could take a view overlooking the decision arrived at the review meeting chaired by the Prime Minister. The then Secretary, Shri Gokak, in evidence stated *"I still do not recollect having seen the minutes. I can assure the House that it was not my intention to do anything of that kind"*.

2.16 Subsequent to this meeting, the Committee called for relevant files including the minutes of the review meeting taken by the Prime Minister in November, 1997. The minutes of the review meeting held by the Prime Minister were received in the Department of Telecommunications on 11 December, 1997. It is seen from the noting dated 11 December, 1997 of Member (Production) that the paragraph relating to reliefs for cellular operators and pager industry as contained in the minutes dated 1 November, 1997 and was forwarded to DDG (VAS) for immediate necessary action. The matter was then passed on to Director (VAS-I, II, III) for urgent follow up action. On 15 December, 1997 the Director (VAS-I) in a note submitted to Director (VAS-II) suggested that the case relating to requests for reliefs sought by the cellular operators and the suggestions made in the review meeting held by the Prime Minister might be referred to DDG (Regulation) with a request to take up the matter with TRAI.

2.17 The noting of the minutes of the review meeting held on 1 November, 1997 under the Chairmanship of the then Prime Minister read as follows:—

"Secretary, the Department of Telecommunications informed that the initial projections regarding growth in cellular and paging services have not proved correct. This has seriously affected the viability of the projects. Cellular operators have been demanding that their licence fees for next two years should be deferred and charged in subsequent years in such a way that the NPV of gross licence fee remains unchanged. They have also requested for an extension of the licence period from the present 10 years to 15 years without charging any extra licence fee. Similarly, the paging service industry has been demanding that the licence fee for the 4th and 5th years may be made nil. It was suggested that the health of the cellular and paging industry would need to be studied

by an expert consultant and further measures considered on the basis of its outcome. After discussion it was felt that it would not be advisable to refer such a study to a private consultant. The matter could be referred to TRAI which has an advisory role under the TRAI Act."

2.18 No record was found in the file submitted to the Committee by the Department of Telecommunications which indicate that the Department of Telecommunications either reverted to Prime Minister's Office or obtained orders of the Minister of Communications that the study be entrusted to an agency other than TRAI.

2.19 On the question of not referring the study to TRAI, the then Secretary, Shri Gokak justified the decision by saying that TRAI was at its nascent stage. Experts, etc. were yet to be deployed. TRAI at that point of time, in his opinion, was busy with re-balancing and restructuring of tariff for the entire telecom sector which was a fundamental exercise. The Committee specifically desired to know whether any attempt was made to formally ascertain from TRAI whether they could undertake the study. The then Secretary, Shri Gokak stated "I do not think I had told them or consulted them on the issue. Sir, I do not remember that".

2.20 In pursuance of the decision taken in the meeting dated 17 December, 1997, the matter was initially discussed with M/s. SBI Caps and a proposal was obtained. It was found that the cost of studies quoted by SBI Caps was too high. Then it was decided to entrust the study to the Bureau of Industrial Cost and Pricing (BICP). The BICP was requested for techno-economic study of the cellular industry in two phases. In the first phase, on 6 January, 1998 BICP was requested for a quick examination of the account books of the four cellular operators (JT Mobiles Ltd., Koshika Telecom, Fascel Ltd. and Aircell Digi Link) who were in default of the payments of licence fee. In the second phase, on 23 January, 1998 BICP was asked to have a more detailed study of the cellular industry as a whole. Subsequently, on 20 March, 1998, BICP informed that they would require at least four months to conduct the study.

2.21 In view of the time being taken by the BICP, during discussions the Chairman, Telecom Commission, Industrial Credit and Investment Corporation of India (ICICI) was also asked informally to study operational performance of the cellular industry. The Committee enquired as to how ICICI, being a lender to the cellular industry, was chosen for the study by ignoring the element of conflict of interest. The then Secretary, Shri Gokak in evidence stated that SBI Caps was in fact initially sounded but they were costly. So, Industrial Development Bank of India and ICICI were suggested. That is how the ICICI came into the picture. He clarified that ICICI was not a new entrant to the Department of Telecommunications. He recollected that the services of the ICICI were opted even when the legislation for TRAI was attempted. He maintained that he had acted in good faith. The ICICI was not something which was introduced to the Ministry by him. It was there already.

2.22 Explaining further, the then Secretary, Shri Gokak informed the Committee that he got into contact with the ICICI and the IDBI to have further discussions on the mechanics after the budget speech of Finance Minister in 1997-98 wherein he stated that the licences had become assignable. There, incidentally, this point arose. So, there was no other reason for preferring ICICI.

2.23 The then Secretary, Shri Gokak maintained that he just wanted to get the inputs of the lenders and nothing else. It was not as if they would be the deciding factor. The ICICI had the professional expertise.

2.24 The then Secretary, Shri Gokak in evidence maintained as under:—

"Well, I made the reference because the ICICI was already associated..... I knew that they were the lenders. But the idea was to find out what the view was. If the lender says that there is a problem well, the cognisance may be taken, but for the final decision, the professional input would be coming from the BICP because that is a more comprehensive study."

Report of ICICI

2.25 The Report of ICICI was informally submitted to the Department of Telecommunications in May, 1998. ICICI had recommended following support to the cellular industry:—

- (i) The licence period to be extended to 15 years and NPV of licence fee be kept same as NPV for 10 years licence period (in effect giving 5 extra years of revenue at no additional cost).
- (ii) The schedule of licence fee to be restructured as below:
 - All operators to be on par as regards payment of licence fee obligations to the Government as of 31 March, 1998.
 - Optional moratorium for payment of licence fee from 31 March, 1998 upto 31 March, 2000.
 - Fixed (quarterly) licence fee schedule over the remaining licence period to be levied such that the NPV of the original licence bid is protected (*i.e.* NPV of the licence fee quoted for a licence period of 10 years to be paid over the extended period of 15 years).

2.26 In its concluding remarks, ICICI observed as follows:

“The ICICI has made certain projections on the basis of its findings with regard to the operational performance of the cellular operators. It has not had the benefit of going through the audited accounts of the cellular operators who have begun their operations recently. Apparently a possibility that assumptions made by ICICI may prove wrong over a 15 year timeframe cannot be ruled out. It would not, therefore, be possible to treat it as sufficient basis for taking important policy decisions. While it may be erroneous to draw any final conclusions on the basis of ICICI's report, it however does indicate that *prima facie* the industry is facing a problem of financial viability. It is expected that the report of the BICP may furnish more relevant facts and figures to provide further insight into the problems of the industry.”

2.27 As per records made available, it is seen that the recommendations of ICICI were processed in the file of the Department of Telecommunications on 8 June, 1998. It was stated in the noting that the recommendations made by ICICI were largely meeting the demand of the cellular operators. It was noted that the issues of reliefs to the cellular industry were quite intricate and inter-ministerial consultations were needed. It was emphasized in the noting that there was a strong possibility of litigation by both categories of bidders, namely, those who had bid for more Circles but have got few licences and those who had bid but got no licence as also public interest litigation, for changing the conditions of open/transparent tenders. The matter was, therefore, referred to the legal advisor in the Department of Telecommunications for obtaining internal legal opinion.

2.28 On 12 June, 1998 the Legal Advisor in the Department of Telecommunications tendered the following opinion:—

“Granting of unavailable benefits in the mutual agreement to the other party can be challenged by Public Interest Litigation demonstrating that public interest is likely to suffer by a favourable action of the Government towards some party. The loss of money when demonstrated by figures and calculations will heighten the emotions and judiciary may intervene. This answers the question that how litigation can be ensued against the

concessions to the industry. Next question relates to that who can petition the court. The *locus standi* in such cases is not exactly followed per civil law but an extended meaning is given to the person who can stand and agitate the matter before the court. The category of petition can include anybody except a completely by-stander and intermeddler."

2.29 After obtaining the legal opinion on 15 June, 1998, the matter was then placed before the Chairman, Telecom Commission. On 16 June, 1998 the Chairman, Telecom Commission submitted a note to the then Minister of Communications which read as follows:—

- "(i) I have gone through the draft report of the ICICI and have also discussed the same with the concerned officials of the ICICI. The officers of the ICICI have promised to send the final report by the end of this week in the light of the discussions that took place at my level.
- (ii) A separate note will be put up to MOC on the course of action that should be taken with reference to the demand of the cellular industry for increasing the licence period and also for giving moratorium for two years in the payment of licence fees. The final decision in the matter can no doubt be taken only on receipt of the BICP's report. In the meanwhile, the possibility of giving an interim relief to the industry in the light of the ICICI's report is being separately considered and it is in this context that the note referred to above will be put up.
- (iii) However, the legal angle is obviously a very important one and will have to be considered before the Government takes a final decision in the matter. I am afraid that I am not in entire agreement with the views expressed by the Legal Adviser. It is true that the possibility of an unsuccessful (bidder) going to a court of law cannot be ruled out. However, I doubt whether the relief asked for by the industry should be denied even though it may be justified on merits only on account of the possibility of the litigation.
- (iv) In my view the terms and conditions of a bid or a licence agreement cannot be frozen for all time to come. If there is a genuine and qualitative change in the situation relief can be given by following a procedure that is judicious and transparent. It has to be recognised that the cellular industry was an altogether new experiment in this country for which there was neither previous experience nor database. If we adopt the penal approach we may land up in a situation in which we may have to manage all the networks erected by the current licensees in accordance with the terms and conditions of their licences. It is doubtful whether any other party will come and take over these projects on the same terms and conditions. The claims of existing licensees who have built up the infrastructure cannot be ignored.
- (v) The Government cannot afford to neglect the health of the industry. In fact, the Government have enacted a special piece of legislation called the Sick Industrial Company (Special Provisions) Act, 1985 to deal with the problems of sickness among sick industrial units. The provisions of the Act are not applicable to units which deliver services. However, since cellular service as well as basic service units are a part of infrastructure, public sector or the private sector has to be taken cognizance of and remedial action initiated by preparing a set of norms and evolving a procedure that ensures objectivity and transparency.
- (vi) It is proposed that we may give a special dispensation to the licensees if it is established that they are becoming genuinely non-viable. If the sickness among them goes beyond a point, the units will have to close down and resulting in loss of

employment for the people and revenue for the Government. According to me, the Government has an inherent right to change the terms and conditions for a licence in the larger public interest. The ground of public interest would also be relevant because if we take drastic action it may have an impact on the flow of foreign investment in India.

- (vii) In view of the above, it is suggested that we may obtain the opinion of the Attorney General with reference to the following:—
 - (a) Whether the unsuccessful bidders and other affected parties may approach a court of law in case the Government decides to alter the terms and conditions of the licence, and
 - (b) Whether the Government can decide to give the reliefs that are asked for in case these are found to be genuine by evolving a procedure which is transparent. A transparent procedure could be evolved by the TRAI. The TRAI could hear all the interested parties and make its recommendations to whom this task could be entrusted. The Government may take a final decision on the recommendations made by the TRAI.
- (viii) MOC may kindly approve the proposal to seek the advice of the Attorney General in the matter. The papers will be submitted to the Ministry of Law, Justice and Company Affairs who, in turn, will refer the same to the Attorney General for his advice."

Extension of Licence Period for Circle Cellular Operators

2.30 On 16 September, 1998, the Department of Telecommunications submitted a note to the Union Cabinet seeking approval on the following proposals:

- (a) The licence period of circle cellular licences be extended from 10 to 15 years with additional licence fee.
- (b) The matter regarding the quantum of licence fees payable for the extended period of five years be referred to TRAI for their recommendations based on which the Government will take appropriate decision regarding the licence fee chargeable on the extended period.

The aforesaid proposals were approved by the Cabinet.

2.31 The note put up to the Cabinet on 16 September, 1998 contained *inter-alia* the following facts:—

- The licensees in Telecommunication Circles had been defaulting in payment of licence fee. Out of 14 operators, 11 operators defaulted in payment of licence fee. The total amount of licence fee outstanding from the beginning till 30 June, 1998 was to the tune of Rs. 1336.58 crore. The efforts made by the Department of Telecommunications to recover the outstanding licence fee dues had been frustrated due to stay granted either by TRAI or by the competent courts. Litigation was going on with 5 operators.
- In terms of action taken by the Department of Telecommunications on the repeated representations from COAI, BICP was requested to carry out a detailed techno-economic study of the cellular industry as a whole in order to assess the health of the cellular service industry and possible reliefs that might be considered. The report of BICP was not received. Meanwhile, ICICI who were requested to carry out a quick

study about the operational performance of cellular operators only in Telecommunication Circles had submitted their report in June, 1998. The synopsis of the Report of ICICI was placed before the Cabinet.

- In view of the Department of Telecommunications' inability to realise the licence fee from all operators and its adverse impact on the receipt Budget of Government of India for 1998-99, this matter was discussed at the level of Finance Minister and Minister of Communications on 26 June, 1998. The report submitted by ICICI was also briefly considered. At this meeting notice was taken of the persistent requests made by the operators for moratorium on payment of licence fee as also extension of licence period. It was considered that the Telecom Sector has emerged as a major destination for private sector, including foreign investors, and a genuine problem being faced by the industry which is yet at its nascent stage should not be totally ignored lest it sends out negative signals to the investing community. Accordingly, it was decided that the matter concerning relief in the form of extension of licence period and licence fee payment schedule shall be referred to TRAI subject to fulfilment of certain conditions like enhancement of financial bank guarantees of operators to securitize the total outstanding till 31 December, 1998 and their agreement for making payment of interest on overdue payments as per the licence conditions.
- Since all the operators were not in a position to securitize the outstanding dues, as a matter of next course of action, a meeting was held in the chamber of Finance Secretary on 1 September, 1998. After deliberations it was felt that moratorium may not be considered and instead the period of licence could be considered for extension upto 15 years especially in view of the provision of licence agreement.
- On 15 September, 1998 a meeting was held between Finance Minister and Minister of Communications where it was decided that it will be advisable to restrict the reference to TRAI to the issue regarding extension of licence period beyond 10 years upto 15 years and the quantum of licence fee and its structure during the extended period.

Report of BICP

2.32 The BICP submitted its report on cellular industry to the Department of Telecommunications on 9 November, 1998. Some major findings in the Report of BICP were as follows:

- The market demand for cellular phones was assessed by the companies on the basis of population, GDP, per capita income, consumption patterns, etc. During 1995-98 the actual demand for cellular phones exceeded the estimated demand in the Metros, while in the circles the actual demand was only 15 to 45% of the estimated demand in 1996-98. However, the Bureau is of the view that this is only a temporary phenomenon and the demand for cellular services will pick-up as the prices of handsets, activation fees, security deposits, etc. decline. The price elasticity of demand shows that a 10% fall in the price of a handset results in a 19% increase in demand thus indicating that the demand for cellular services is essentially robust.
- Setting up of a cell phone network involves a number of activities. The time taken by operators in critical activities and the start up of commercial operations differs widely among operators in the Circles resulting in time and cost over runs. There were no clear-cut guidelines or standard schedules for project implementation at the time of the issue of licences. The Bureau recommended that the Department of Telecommunications should issue guidelines and lay down procedures for obtaining clearances within a fixed and realistic time frame to ensure speedy implementation of projects in the future.

- Of the three segments of a cellular network, namely, switching capacity, radio frequency and transmission, the capacity of the network is largely determined by the switching capacity. The utilisation of switching capacity in most of the Metros has been enhanced by the operators. The capital expenditure per subscriber in Metros and Circles was initially high but is now showing a declining trend. There are, however, substantial differences in the capital expenditure per subscriber even between companies in the same Metro/circle. Operators who designed their networks at a lower busy hour erlang per subscriber were able to save on capital expenditure.
- The Bureau has analysed the financial viability of the selected cellular companies on the basis of actual performance and the future projections made by them. The analysis reveals that the companies have suffered losses during the initial years of operation. Viability has been evaluated by the Bureau by adopting an IRR of 16% which is considered to be reasonable for any capital intensive infrastructure industry.
- The normative exercise done by the Bureau in respect of the optimum network usage and other relevant adjustments shows that the operational results of the selected cellular operators have by and large fallen below the reasonable level of Internal Rate of Return (IRR) which would make them viable. Therefore, with a view to enabling them to improve their performance, the Bureau considered it desirable to assume a monthly rental of Rs. 600/- per subscriber. With the exercise of this option it is seen that a majority of the companies become viable with an IRR exceeding 16%. Cost analysis of the companies with an IRR of less than 16% however, shows that their non-viability is mainly due to the high air time cost. Unless, these companies review their investment plans and reduce the cost of operations to that achieved by the efficient operators in their respective Metros and Circles, it would be difficult for them to become viable.

2.33 In its report BICP had made the following key recommendations:—

- The present monthly rental of Rs. 156 per subscriber is increased to Rs. 600 per subscriber to improve the viability of majority of cellular operators.
- The inefficient operators be advised to review their future investment plans in order to achieve the level of efficiency of the efficient operator.
- the Department of Telecommunications may encourage the operators to opt for a higher frequency spectrum in the Metros and major DHQs in Circles to reduce capital costs of the projects.
- The Department of Telecommunications should issue necessary guidelines and lay down the procedures for obtaining clearances from various Government agencies within a fixed time frame.

2.34 Full Telecom Commission in its meeting held on 11 November, 1998 considered the concessions demanded by the telecom operators and took the following decisions:—

- Payment of licence fee schedule could be restructured such that NPV of the tender for the initial period as a whole is preserved; the unpaid licence fee of a year could be allowed to be deferred for payment in future with 16% interest compounded annually. Firm proposals in this behalf could be evolved after meeting with Financial Institutions.
- Some other reliefs such as default rate, extent of securitisation of outstanding payments through bank guarantees, etc. would also be necessary.

- Government may consider constituting an official group comprising of representatives of the Department of Telecommunications, Ministry of Finance, Planning Commission, Law Ministry and Financial Institutions to work out concrete proposals on the subject for consideration by the Deputy Chairman, Planning Commission (Chairman of National Task Force on IT).

Need for a New Telecom Policy

2.35 The Government of the day recognised that the result of the privatisation had so far not been entirely satisfactory. While there had been a rapid rollout of cellular mobile networks in the Metros and states with over 1 million subscribers at the relevant point of time, most of the projects were facing problems. The main reason, according to the cellular and basic operators had been the fact that the actual revenues realised by these projects had been far short of the projections and the operators were unable to arrange financing for their projects and, therefore, complete their projects. Basic telecom services by private operators had only just commenced in a limited way in two of the six Circles where licences were awarded. As a result, some of the targets as envisaged in the objectives of the NTP-1994 had remained unfulfilled. The private sector entry had been slower than what was envisaged in the NTP-1994. The Government viewed the above developments with concern as it would adversely affect the further development of the sector and recognised the need to take a fresh look at the policy framework for this sector. It was felt that a new telecom policy framework was also required to facilitate India's vision of becoming an IT superpower and develop a world class telecom infrastructure in the country.

Constitution of Group on Telecommunications

2.36 On the directions of the then Prime Minister, a Group on Telecommunications was constituted on 20 November, 1998 to make recommendations on the following issues:—

- Proposed New Telecom Policy
- Issues relating to existing licensees of basic and cellular services and suggest appropriate remedial measures within the framework of New Telecom Policy
- Issues relating to TRAI

Outstanding Dues — Reference made to the Attorney General of India

2.37 The outstanding dues of licence fee against the Basic and Cellular Service Operators as on 20 December, 1998 was over Rs. 3100 crore. In the 3rd meeting of the Group on Telecommunications held on 15 December, 1998, it was *inter-alia* decided that the Department of Telecommunications would prepare a comprehensive note seeking the views of the Attorney General on the problems faced by the licensees.

2.38 In pursuance of the aforesaid decision, on 20 December, 1998, the then Minister of Communications sent a note to the Chairman, Group on Telecommunications for making the reference to the Attorney General of India. The note *inter-alia* contained the following points:—

- There was no legal, financial, commercial or moral justification for agreeing to the representation, made by the Operators of Cellular Phones and Basic Services. The demands of these operators were:
 - (i) A moratorium on payment of licence fee for two years;
 - (ii) Extension of period of licence from 10 to 15 years.

- Government have no option but to enforce the terms and conditions of licences in toto, as no deviation from the provisions of the licence agreements was legally or constitutionally permissible. These licences have been signed by the licensees after out-competing other bidders. The unsuccessful bidders could legitimately claim that had they known that departure from the licence agreements would be subsequently permitted, they would have given bids on different calculations and perhaps succeeded in obtaining licences. The law on the subject has been clearly laid down by the Supreme Court in *Poddar Steel Corporation Vs. Ganesh Engineering Works and others* (1991) 3 SCC 273 and *R.D. Shetty Vs. International Airports Authority of India*. It has been held that any deviation from the terms and conditions of licence agreement or tender is a violation not only of constitutional mandate of Article 14 but also of judicially evolved rule of the administrative law.
- Already two writ-petitions, under the genre public interest litigation, have been filed in the Delhi High Court. In these writ-petitions (i) *P.L. Wadhwa Vs. Union of India* and 6 others and (ii) *Bharatiya Kisan Union and 16 others*—serious and specific allegations have been made, on sworn affidavits.
- Shri H.D. Devegowda, former Prime Minister, in his letters of 5 September, 1998, 15 September, 1998 and 8 October, 1998 to the Prime Minister, has also made serious and specific allegations against the cellular operators.
- Shri R.K. Kumar, M.P. and former Minister in his letter of 16 September, 1997 has observed that it is immoral on the part of the giants like RPG, Essar, Skycell, BPL, Reliance, etc. to first obtain the licence with full knowledge and then plead for moratorium.
- Non-recovery of huge amounts would severely curtail the budgeted receipts and add to the fiscal deficit. The Comptroller and Auditor General of India in its Report No. 6 of 1998, have made adverse comments about (a) Cellular mobile telephone service in Metros: Undue benefit of Rs. 837 crore to operators, and (b) Outstanding licence fee from cellular operators.
- The licensees are votaries of free market. They had given competitive bids and signed the licence agreements with open eyes. Any concession given to them at this stage would be incompatible with the norms of healthy business and send wrong signals to the market. An impression would go round that the terms and conditions of the licence agreements signed with the Government need not be taken seriously. The operators' plea of wrong calculations or projections does not hold good. Had they made more profits than they anticipated at the time of giving bids, would they have come forward to share the extra profits with the Government in view of its high fiscal deficit? If they have failed to show enterprise, skill or imagination needed for the venture, they are solely responsible. They could remove their shortcomings in the remaining six/seven years of licence period.
- I understand from the senior technical officers of Telecom Commission that there should be no insurmountable difficulty in enforcing the terms and conditions of the licence. Apart from encashment of the Bank guarantees, the defaulting licensee's network could be taken over and open bids invited again to fix a new licensee or entrust the operation of the Department of Telecommunications. There are, moreover, two licensees in almost all the Metro cities and territorial Telecommunication Circles. In any case, it is unlikely that both the licensees in a Metro city or territorial telecom circle would simultaneously expose themselves to the risk of losing bank guarantee and network.

➤ The note concluded with the following suggested course of action:—

- (i) This note be sent to the Attorney General of India for obtaining his advice on the legal/constitutional issues involved. The Chairman of the Group may add his comments to this note before sending it to the Attorney General of India.
- (ii) As soon as the Attorney General's advice is available, the case may, if necessary, be placed before the Prime Minister or Cabinet for taking early decision regarding recovery of the huge amounts that have become due, or would become due till atleast the date the new telecom policy is formulated and approved by the Cabinet.

2.39 On 21 December, 1998, the Minister of Communications also sent a letter to the Finance Minister. The letter *inter-alia* read as follows:—

"You are, I understand, seized of the problems pertaining to non-recovery of huge amounts of licence fees from operators from cellular phones and basic services. The matter was last considered by the Cabinet on 16 September, 1998.

In connection with this case, a number of specific allegations have been made by Shri H.D. Devegowda and other senior Members of Parliament and also in the two Writ Petitions filed in the Delhi High Court. These allegations, I find, have not so far been checked with the specificity they merit. I shall be grateful if you will kindly have these allegations checked from the Finance Ministry's agencies/organisations which may, directly or indirectly, be concerned with them.

The details of the aforesaid allegations and connected issues are contained in the note to the Chairman of Group on Telecommunications, Shri Jaswant Singh. A copy of the said note is placed below, alongwith the copies of the relevant documents. Dr. Vijay Kelkar, Finance Secretary, who is a member of the Group, is aware of the entire background of the case.

As regards, the allegations that could also be checked by the Department of Company Affairs, they are being referred to it."

2.40 On 24 December, 1998, the then Minister of Finance wrote back to the then Minister of Communications. The communication *inter-alia* read as follows:

"I fully share your concern regarding the non-recovery of huge amounts of licence fee from operators of cellular phones and basic services. As you are aware, a budget provision of Rs. 2800 crore has been made in the current year's budget and the aforementioned non-recovery will add to the budget deficit.

The allegations cited in your note broadly fall in two categories : (i) Non-recovery of dues by the Department of Telecommunications from cellular operators, and (ii) Divestment of equity by some of the cellular companies at high prices. On the second issue, I note that the Department of Telecommunications is making a reference to Department of Company Affairs regarding the allegations that are to be looked into by them. If these allegations constitute a violation of the Licence Agreement, the same needs to be examined and investigated by the Department of Telecommunications so that appropriate legal action may be taken in terms of the agreement and suitable administrative action could be initiated. On the first issue, I am sure the Department of Telecommunications will be taking suitable action.

As regards the demand of Telecom Operators for concessions in licence fee payments, I have always held the view that businessmen should learn to take the responsibility of their decisions as they cannot be votaries of free market on the one hand and come back to the Government for a bail out in such a situation on the other."

2.41 The Chairman, Group on Telecommunications on 24 December, 1998 forwarded the note of Minister of Communications to the Attorney General of India along with the following comments:

- The Government have constituted a Group on Telecommunications with the objective of not only resolving the present problem arising from cellular and basic telephone operators in implementing their licence condition but also to evolve a New Telecom Policy based on technological changes and principles of convergence which have become relevant over the last few years. In this context a Sub-Group has been constituted to suggest the contours of the New Telecom Policy. A separate Group on Spectrum Management has also been constituted to suggest modalities for optimising the spectrum available with us. A new Telecom Policy would be substantially in place by the middle of February and the resolution of the existing problems of the licensees would be undertaken in the context of this new policy framework.
- The issue under consideration at this stage is whether pending the formulation of a new Telecom Policy it would be legally and morally acceptable if the existing licence holders were asked to extend their guarantee till 31 March for enabling a decision to be taken in the light of the new policy parameters. The other alternative would be to encash the guarantees and ask the licensees to meet all outstanding payment obligations notwithstanding the current policy exercise. In the interest of obviating disruptions in the existing services being provided by cellular operators or execution of projects currently underway the balance of administrative convenience may lie in permitting flexibility by asking licensees to seek a roll over their guarantees till the end of the financial year and seek a resolution of their current problems in the context of the new policy. It would need to be clarified to them that this does not entail any new revenue concession and that it would be in no way compromise the outstanding and new payment liabilities which would continue to accrue in the meantime.
- Minister of Communications has raised legal and moral issues pertaining to new concessionality if a moratorium on licence payment or extension of the period of licence were to be considered. The issue under consideration at this stage as explained above, is not about new concessionality and the arguments of Minister, Communication would appropriately need to be addressed at the relevant time when the New Telecom Policy comes up for consideration by the Group on Telecom and in the context of any new concessions which that might be contemplated at that stage.
- Attorney General of India may wish to consider whether a roll over of the guarantees till the end of the financial year, without any revenue concessionality, till a new policy framework is worked out would be legally or morally tenable. The issues raised by Minister, Communication may also kindly be kept in view.

2.42 On 6 January, 1999 the Attorney General of India rendered his advice to the Government. Some of the points made by the Attorney General of India are as follows:—

- The plea of the operators about wrong calculations or projections or the market having taken an adverse turn does not absolve them from their obligations under the existing licence agreement and certainly does not in law entitle them to any extension

of the licence period to 15 years. However, I am given to understand that the Cabinet has taken a decision in principle to extend the period of licence from 11 to 15 years for Telecommunication Circles and recommendations of TRAI have been sought about the quantum and structure of fees during the extended period.

- The basic change contemplated in the policy is the restructuring of the licence fee by altering the mode of lump-sum payment to a revenue sharing arrangement. Under the previous policy lump-sum payment depending on the acceptance of the highest bid was provided. Revenue sharing is the suggestion of the industry (COAI). The other suggestion of the industry is that the revenue sharing arrangement be given retrospective effect from the very beginning of the scheme. In my view this change over from lump-sum amount to revenue sharing would tantamount to a substantial alteration of the original agreement. Besides, effecting the change retrospectively will be vulnerable to a challenge from unsuccessful bidders on the ground that had they known that departure from the licence agreements would be subsequently permitted, they would have given bids on different calculations and perhaps succeeded in obtaining licences. There is likelihood of such challenge being upheld by the courts.
- The next question is about the arrangement that can be arrived at in the interregnum with the circle operators. Any arrangement which gives the defaulting operators time for payment must ensure that Government's right under the Bank Guarantees are protected. Therefore, the grant of indulgence to the defaulting operators for time for payment of admitted outstanding should be on the following conditions:
 - (i) Bank Guarantees which have lapsed should be renewed.
 - (ii) Bank Guarantees which are about to expire should be extended.
 - (iii) The amount of Bank Guarantees should be enhanced to cover the current outstanding of the operators.
 - (iv) Some payment be made to show their *bona fides*.
- Another objectionable feature about such an arrangement is that the operators who have paid their dues are treated at par with defaulters. I understand that after the non-defaulting parties have come to know about the on-going dialogue for settlement their inclination to pay has diminished.
- Besides, Government should insist that the operators make some payment say 20% of the admitted dues to establish their *bona fides*. If that be done and the Bank Guarantees are extended and the amounts covered by the Bank Guarantees are enhanced to cover the current outstanding then no valid objection can be taken to the grant of time for payment as a *pro tem* arrangement till the finalisation of policy.
- It is essential that Government's action should not transmit any signal or message that licensees can break licence conditions and remain in arrears for large amounts and then plead for major favourable changes on the ground of financial hardship because of wrong projections, etc. Government action should not be perceived as putting a premium on defaults or favouring the defaulters.

2.43 The opinion tendered by the Attorney General of India was discussed in the meeting of the GoT and then the matter was placed before the Prime Minister for his consideration. In his noting dated 9 January, 1999, the Prime Minister gave orders which read as follows:—

"I agree that we should follow the advice of the Attorney General of India. Attorney General of India has himself outlined the safeguards. The issue of an appropriate guarantee structure should be discussed and settled between the Ministry of Finance and MOC for effecting roll over till 31 March, 1999 and enabling this problem to be suitably resolved."

2.44 The outstanding dues of licence fee against the Basic and Cellular Services Operators as on 31 January, 1999 mounted to approximately Rs. 3708.10 crore (including interest). The Government as a *pro-tem* measure pending finalisation of a New Telecom Policy, based on opinion dated 6 January, 1999 of the Attorney General of India, asked the licensees on 25 January, 1999 to pay the dues and agreed to extension of the date of payment of licence fee upto 28 February, 1999 provided by that date the licensees in order to establish their *bona fides* paid at least 20% or more of the arrears.

2.45 As four companies, namely, M/s. Aircel Digilink India Ltd., M/s. Fascel Ltd., M/s. Koshika Ltd. and M/s. JT Mobiles Ltd. failed to pay 20% of the arrears, bank guarantees were invoked. Litigation ensued in the High Courts, mainly in the Delhi High Court. Six licences were terminated (as they failed to pay even 20% of arrears) where there was no stay from courts and fall back option to subscribers to avail service from other operator was available. Three licences were restored subsequently on payment of dues.

CHAPTER III

NATIONAL TELECOM POLICY-1999 & MIGRATION PACKAGE

New Telecom Policy-1999—Policy Prescriptions

3.1 The report of the Group on Telecommunications on New Telecom Policy was considered and approved by the Cabinet on 26 March, 1999 to be made effective from 1 April, 1999. The salient features of the NTP-1999 were as follows:—

- Access to telecommunications is of utmost importance for achievement of the country's social and economic goals. Availability of affordable and effective communications for the citizens is at the core of the vision and goal of the telecom policy;
- Create a modern and efficient telecommunications infrastructure taking into account the convergence of IT, media, telecom and consumer electronics and thereby propel India into becoming an IT superpower;
- Transform in a time bound manner, the telecommunications sector to a greater competitive environment in both urban and rural areas providing equal opportunities and level playing field for all players;
- Achieve efficiency and transparency in spectrum management;
- Importance was assigned to TRAI;
- Considering the growing need of spectrum for communication services, there was a need to make adequate spectrum available. It is essential that spectrum be utilised efficiently, economically, rationally and optimally.
- The following charges were prescribed:—
 - (i) One time entry fee (on the basis of TRAI recommendations).
 - (ii) Licence fee as revenue share (on the basis of TRAI recommendations).
 - (iii) Spectrum usage fee.

Evolution of Migration Package

3.2 While approving the New Telecom Policy-99, the Union Cabinet noted, *inter-alia*, that it was in the public interest for the New Telecom Policy to be uniformly applicable all over the country. The Cabinet accordingly directed that the advice of the Attorney General of India be obtained, on the issue as to whether it was legally possible to bring the existing licensees under the New Telecom Policy regime and if so, the appropriate modalities therefor. Accordingly, reference was made to the Attorney General of India seeking his opinion in the matter. The opinion of the Attorney General of India was received in the PMO on 16 June, 1999. The Attorney General of India opined, *inter-alia*, as follows:—

- In the light of the objectives of NTP-1999 and having regard to the ground reality and the prevailing situation engulfing the telecom industry, migration of licensees from the 1994 telecom policy to NTP-1999 is warranted.

- Integration of licences issued under the 1994 telecom policy into NTP-1999 should not be retrospective, but from a prospective date, subject to the following conditions:—
 - (i) Payment of arrears of licence fee, including interest, should be a pre-condition for migration to NTP-1999.
 - (ii) Time for clearance of arrears may be extended upto 31 December, 1999 or such other date that Government may deem fit.
 - (iii) The period of licence may be extended to 20 years.
 - (iv) The terms and conditions should be accepted as a package by the operators and all legal proceedings against Government of India withdrawn.
 - (v) Revenue share under NTP-1999 may be determined by Government based on recommendations of TRAI.
- Integration of the 1994 licensees subject to the above conditions is legally tenable and will withstand judicial scrutiny.

3.3 The following justification was advanced by the Attoreney General of India while making his recommendations:—

- Any termination of licence will have an immediate dampening effect on the banks and financial institutions, both national and international and will result in lack of lender's confidence in the Indian telecom sector.
- Termination of licences and invocation of bank guarantees will lead to immediate and long drawn-out litigation by current licensees.
- The relief accruing to the licensees without absolving them of their obligation to pay arrears of licence fees and other dues, should be viewed and appreciated in the context of the larger public interest in the revival and growth of the telecom industry.
- The change in the regime — from duopoly to multipoly — will be more productive of revenue.
- In the context of extension of effective date of the licence, even if there is some loss of revenue, it is well settled that public revenue is not synonymous with public interest.

3.4 While forwarding the opinion of the Attorney General of India, the Prime Minister's Office in the communication dated 17 June, 1999, conveyed to the Department of Telecommunications following directives of the Prime Minister:—

- Cabinet note may be put up by the Department of Telecommunications urgently seeking the approval of the Cabinet to the course of action suggested by the Attorney General;
- Cabinet approval be solicited on those elements/ingredients mentioned in the Attorney General's opinion on which specific Government approval is necessary;
- Given the fact that we have now received the Attorney General's opinion which includes his suggestions for flexibility on the effective date, no precipitate action be taken by the Department till the Cabinet has taken a view on the AGI's opinion. Cases in which action has been initiated/likely to be initiated may be reviewed in the light of the aforesaid.

Note for Cabinet on Migration Package

3.5 On receipt of the opinion from the AGI, a note for the Cabinet dated 28 June, 1999 was submitted to Cabinet Secretary for urgent consideration of the matter by the Cabinet. Also advance copies of the note were sent to the Ministry of Law and the Ministry of Finance with the request that their views on the subject may be expressed in the meeting of Cabinet itself. On 5 July, 1999 the Department of Telecommunications received the comments from both the Ministries. The Ministry of Law concurred in the note for the Cabinet.

Views of MoF on the Migration Package.

3.6 The Ministry of Finance had, however, raised certain basic objections to the proposal offered under the Migration Package. These were as follows:—

- The Department of Telecommunications has already examined the requests of licensees for extending the effective date and taken a decision based on the merits of each case; allowing across the board extensions in the effective date to all the licensees as proposed in the Cabinet note would mean giving this benefit to those who had not asked for it, and those who do not deserve it.
- It would be better to permit the licensees to pay such dues in instalments, if considered justified on examination of individual cases.
- The Department of Telecommunications needs to examine whether the problems being faced by the operators are due to inefficiency or other factors beyond their control.
- The Department of Telecommunications should explore the possibility of levying suitable one time charges on account of foregoing revenues over the remaining period of licence, in lieu of the migration package being offered.
- The arrears payable by the existing licensees were Government dues and could not be treated as entry fee; especially when the entry fee itself was a bidding parameter under the new policy.
- Allowing extension in licence period without any fee would not be tenable.

3.7 On 6 July, 1999, the Department of Telecommunications submitted a supplementary note for Cabinet where viewpoint of the Department was explained in response to the comments of the Ministry of Finance to the offer of Migration Package.

Approval of Migration Package

3.8 The draft note for Cabinet was approved by the Prime Minister in the capacity of Minister of Communications and Information Technology on 28 June, 1999. On consideration of the legal opinion given by Attorney General of India and views of Financial Institutions and consideration of all relevant facts including possible implications, the Union Cabinet in its meeting held on 6 July, 1999 approved in favour of the migration of the existing licensees to the regime of NTP-1999.

Observation of the then President of India on the issue of implementation of Migration Package by the Caretaker Government.

3.9 On 26 April, 1999 Parliament was dissolved and early elections were called. The 13th Lok Sabha was constituted on 10 October, 1999 and the new Government was formed. Thus during the period from 26 April, 1999 till 10 October, 1999, the caretaker Government was

in charge. Based on letters received from Shri Chandrashekar, former Prime Minister of India and a Memorandum presented by CPI(M) and CPI on the issues of telecom package and policy of disinvestment decided upon by the Union Cabinet of the caretaker Government, the then President in his letter dated 14 July, 1999 addressed to the then Prime Minister of India raised certain points, which *inter-alia* read as follows:—

“All these matters have been discussed in the media and others from our public life have also drawn my attention to them. While it is not necessary for me to go into an in-depth analysis of the proposals in question, I have thought it fit to acquaint myself with the broad features of these proposals. One basic conclusion which I have arrived at is that there is no urgency why these decisions should be taken in haste at this juncture. I feel these are proposals and recommendations which call for a larger consultation process and on a fuller examination which will be more feasible for a post-election Government. In this connection, I find merit in the view expressed to me that while the National Telecom Policy-1994 was placed in both Houses of Parliament and adopted by them, the 1999 policy has been adopted by an executive decision only without any sort of discussion or approval by any Parliamentary institution.

In this connection, I would like to draw your attention to D.O. letter No. 1/24/I/99-Cab. dated April 18, 1999 and May 1, 1999 from the Cabinet Secretary addressed to all Secretaries to the Government of India, while work of the Government should not be held up ‘it would not be proper for decisions to be taken during this period which set new policy or involve new spending of a significant order or constitute major administrative/ executive decisions’ and that ‘policy decisions could be taken if they are absolutely necessary and brook no delay’, I am not persuaded that the policy decisions in question satisfy the two criteria which have been laid down in the Cabinet Secretary’s letter issued under your instructions and which I had also stressed in my letter to you of May 13, 1999. The proposals involve major administrative and executive decisions and constitute new policies with significant financial implications which were specifically precluded.

I would suggest that the Cabinet decisions on these issues be regarded as decisions in principle to be operationalised after the elections by the next Government. Both the Indian Airlines and Telecom decisions have enormous financial implications.”

3.10 In his communication dated 19 July, 1999 addressed to the President of India, the then Prime Minister of India answered various queries and objections raised with regard to the Migration Package. He also viewed the letters and representations received by the President of India regarding the Telecom Sector as being based on several misconceptions. His views about the package *inter-alia* were as follows:—

- (i) The wide ranging terms of reference of the Group on Telecom constituted on 20th November, 1998 included not only the framework of a New Telecom Policy (NTP) but also issues relating to the existing licensees of Basic and Cellular services and suggested appropriate remedial measures within the framework of a New Telecom Policy. The report of this Group was considered and approved by the Cabinet on 26th March, 1999. The Cabinet while approving the NTP-1999, noted, *inter-alia*, that it is in the public interest for the NTP to be uniformly applicable all over the country. The Cabinet accordingly, decided that the advice of the Attorney General be obtained on the issue as to whether it is legally possible to bring the existing licensees under the NTP regime or alternatively, to extend the NTP to the Circles where there are existing licensees and if so, the appropriate modalities therefor. Accordingly, a reference was made after the approval of the then Communications Minister, to the Attorney General on 1 April, 1999 and his response was received on 16 June, 1999.

- (ii) The approval of the Cabinet of 6 July, 1999 which decided to adopt the course of action suggested by Attorney General was basically in pursuance of and designed towards the implementation of the Cabinet decision taken on 26 March, 1999.
- (iii) Regarding the desirability of a discussion on the new Telecom package when the new Parliament was to be constituted at a later date, It was clarified that the NTP-1999 which was approved by the Cabinet on 26 March, 1999, was neither specifically discussed in Parliament nor was this necessary to do so particularly since no legislative aspect was involved. A copy of this policy was however, placed in the Parliament Library/Parliament Secretariat. The NTP-1999, itself dealt with the problems of the existing operators. It was the Government's intention to satisfactorily resolve the problems being faced by existing operators in a manner which is consistent with their contractual obligations and was legally tenable. In view of the foregoing there had been no disregard of procedures in regard to the approval by the Cabinet of a package designed to mitigate the problems of existing Cellular and Basic Operators which was only in pursuance of an earlier decision of 26 March, 1999.
- (iv) The then Prime Minister also justified the points raised in regard to the urgency of the aforesaid decision on the following considerations:—
 - (a) The Indian Financial Institutions had an exposure of over Rs. 8000 crores in this sector and any delay in mitigating the problems of the Telecom operators would have resulted in a significant increase in the non-performing assets (NPAs) of these institutions. We had also received the assessment of the Indian Financial Institutions subsequent to a meeting taken by Finance Secretary, at the time of the deliberations of the GoT and later by the Secretary, Department of Telecommunications, after the receipt of Attorney General's advice. The Financial Institutions were of the view that unless measures as now approved by the Cabinet was implemented, no financial closure was possible and this would have led to a closure/bankruptcy of a large number of companies, who had significant exposure in this sector. Apart from number of Indian companies, this sector had also attracted significant Foreign Direct Investment (FDI) and apart from an interruption of FDI flows, it would also send negative signals for future FDI flows not only in this sector but for the economy as well. Our Ambassadors to several countries particularly, the USA, had repeatedly stressed that any delay in the resolution of their problems would have a deleterious and long term impact on FDI flows at a crucial time.
 - (b) The then Prime Minister termed the calculations in regard to projected revenue losses from the aforesaid decision as somewhat misleading. Some of these losses in his opinion, could be notional because the projected revenue streams may not be realized since the financial institutions would not finance these projects and financial closure was not possible. Efforts by the Government for a mechanical enforcement of the contract and realization of its dues run into serious legal problems resulting in number of litigations in several courts. Efforts to terminate the licences or take over the assets and encash the Bank guarantees would have led to a protracted legal process with uncertain revenue gains. In the long run, revenues from this sector will only come from a healthy and vibrant growth of the sector with new players seeking licences as well as enhanced tele-density both rural and urban areas. The new policy is primarily designed to benefit the consumers by securing for him a wider choice and assured reliability of services at significantly lower tariffs. He quoted the then Attorney General's advice, as under:

“Strict enforcement of the licence conditions, although legally permissible would in many cases lead to serious financial losses, if not bankruptcy, of large Indian companies already in the field, namely, TATA, Reliance, Birla, Mittal, etc. coupled

with AT&T, Motorola, Hughes, Swisscom, Nokia, etc. Any termination of the licence will have an immediate dampening effect on the banks and financial institutions, both national and international and could well result in lack of lenders confidence in the Indian telecom sector. Banks which have furnished Bank Guarantees may not be able to recover the guaranteed sums from the guarantors, viz., the operators. This would have an adverse impact on the financial health of the banking institutions. Without international lenders and viability being established, the sectoral problems of the industry cannot be resolved. The consequence of enforcement of the 1994 Telecom Policy concurrently with NTP-1999 would be that the Basic and Cellular operators under the existing licence agreements would, by and large have to shut down operations and there would be disruption of this vital segment of the communication services. It would be a case of throwing the baby out with the bath water. This would not be conducive to public interest."

- (c) It would, therefore, be reasonable to suggest that any delay in the resolution of their problems would have caused irreparable and perhaps irreversible damage for the future development of the Telecom Sector. It would also have hurt our credibility in the eyes of the investors, both domestic and foreign and could reverse a new climate of confidence in the economic revival process which we are recently witnessing.
- (d) The then Prime Minister pointed out that a delay on our part in taking the aforesaid decision had caused concern among various political parties. In this connection, he enclosed letters received from Shri Somnath Chatterjee, ex-Member of Parliament and Chairman of the Parliamentary Standing Committee on Communications dated 12 May, 1999, Shri N. Chandrababu Naidu, Chief Minister, Andhra Pradesh of 2 June, 1999 and Shri Pranab Mukherjee, Member of Parliament of 5 June, 1999. While the letters speak for themselves, all of them have stressed urgency in the resolution of the problems of the existing Cellular and Basic operators particularly Indian companies and one of them has expressed concerns "that any delay in taking a final decision in this matter would result in complete closure of the Cellular companies".

3.11 The then Prime Minister concluded his letter with the following words:—

"I hope that in the light of the aforesaid, you would be persuaded that the Cabinet decision in pursuance of Attorney General's advice needed urgent implementation and that the course of action adopted by my Government is in the best interest of the Telecom sector. This is an area where taken in conjunction with the new Information Technology policy, India has the potential of becoming a truly global player for maximising the benefits of its vast reservoir of talent in software and related fields.

It would also be appropriate to conclude that the Telecom decision is basically in pursuance of an earlier decision and given the public interest involved and the need for its urgent implementation brooking no delay, the twin criteria laid down in Cabinet Secretary's letters of 18 April, 1999 and 1 May, 1999 have been reasonably satisfied."

Implementation of Migration Package

3.12 The offer of migration was made to the existing licensees (36 cellular and 6 basic) on 22 July, 1999. The details of the offer were as follows:—

- The cut-off date for change over to the NTP-1999 regime was fixed as 1 August, 1999.

- The Licensee will be required to pay one time entry fee and licence fee as a percentage of gross revenue under licence. The entry fee chargeable will be the licence fee dues payable by existing licensees upto 31 July, 1999, calculated upto this date duly adjusted upon notional extension of effective date.
- The licence fee as a percentage of gross revenue under the licence shall be payable w.e.f. 1 August, 1999. The Government will take final decision about the quantum of the revenue share to be charged as licence fee after obtaining recommendations of TRAI. In the meanwhile, Government have decided to fix 15% of the gross revenue of the licence as licence fee.
- A total of at least 35% of outstanding due including interest payable as on 31 July, 1999 and LD charges in full will have to be paid on or before 15 August, 1999.
- If either of the cellular operator in a given service area does not accept the package, both the existing operators will continue in the existing licensing arrangement untill the validity of the present licences.
- The licensees will forego the right of operating in the regime of limited number of operators as per the existing licence agreement and would operate in multipoly licensing regime *i.e.* additional licences without any limit may be issued in a given service area.
- There shall be a lock-in of the present share holding for a period of five years counted from the date of licence agreement (effective date).
- For the purpose of calculations of outstanding licences upto 31 July, 1999, the effective date of all the licences of cellular telecom circle and basic telephone services will be notionally extended by a period of six months. This does not apply to Metro cellular licences.
- The liquidated damages as per the existing licence agreement shall be paid latest by 15 August, 1999.
- The period of licence shall be 20 years starting from the effective date of the existing licence agreement.
- Migration to the NTP-1999 on the condition mentioned will be permitted on the premise that aforesaid conditions are accepted as a package in its entirety and simultaneously all legal proceedings in Courts, Tribunals, Authority or in arbitration instituted by the licensee and association of cellular and basic service operator against the Department of Telecommunications or Union of India shall be withdrawn.

3.13 All the CMTS and Basic Telephone Service licensees migrated to the revenue sharing regime (except M/s. Koshika Telecom for UP-East Cellular Licence, who gave unconditional acceptance at a later date on 30 November, 1999 and did not pay dues, hence the licence was terminated).

Observations of the Election Commission of India on Implementation of Migration Package

3.14 The matter relating to changing over from fixed licence fee based private telecom operations to new revenue sharing operations was raised before the Commission. The Commission noted that there had been wide coverage of this matter in the print and electronic media. The Commission also noted reports regarding different perceptions in the matter by TRAI, the Department of Telecommunications and Telecom Operators. In this background, the Commission in a communication dated 27 July, 1999 sought comprehensive factual report giving details of the case and its current status from the Cabinet Secretary.

3.15 In a communication dated 28 July, 1999, the Department of Telecommunications submitted a factual note to the Election Commission of India. The facts relating to the matter submitted to the Commission were as follows:—

- (a) Government had constituted a Group on Telecommunications on November 20, 1998 under chairmanship of the then Deputy Chairman, Planning Commission; the wide ranging terms of reference of Group on Telecommunications included making recommendations for the New Telecom Policy as also suggest appropriate remedial measures on issues relating to the existing licensees of Cellular and Basic Services within the framework of New Telecom Policy.
- (b) On consideration of the report of the Group on Telecommunications, the Cabinet approved the New Telecom Policy (NTP-1999) at its meeting held on 26 March, 1999. While approving the NTP-1999, the Cabinet noted, *inter-alia*, that it is in the public interest for the NTP to be uniformly applicable all over the country; the Cabinet accordingly directed that the advice of the Attorney General of India be obtained on the issue as to whether it is legally possible to bring the existing licensees under the NTP-1999 regime or alternatively, to extend the NTP to the Circles where there are existing licensees, and if so, the appropriate modalities therefor.
- (c) In accordance with the above direction of the Cabinet, a reference was made to the Attorney General of India seeking his advice in the matter. The Attorney General of India gave his considered opinion alongwith the reasons for each of the conclusions of the opinion. In the light of the Attorney General's opinion, the matter was considered by the Cabinet at the meeting held on 6 July, 1999 and approved the migration of existing licensees to NTP-1999 regime as a package; the cut-off date for change over to NTP-1999 regime was fixed as 1 August, 1999.
- (d) After operationalising various aspects of implementation of the package for migration, letters have been issued to the eligible licensees conveying to them the proposed package for migration; licensees have been given time upto 29 July, 1999 to exercise their option for acceptance of the package.

3.16 In the same communication it was emphasized that the decision taken by the Cabinet at its meeting of 6 July, 1999 was a follow-up on the substantive decision taken in regard to NTP-1999 and the desirability of its uniform application all over the country at the meeting held on 26 March, 1999. Besides, by virtue of the decision taken by the Cabinet on 6 July, 1999 steps for implementation and operationalising various aspects of the package had already been initiated.

3.17 It was also submitted that the urgency of the matter emanated from the fact that in the absence of this revenue-sharing arrangement, most Indian and foreign companies would not have been able to secure financial closure and a number of projects would have had to be abandoned leading to a large scale bankruptcy and failures. Apart from significant increase in Non-Performing Portfolios of Indian Financial Institutions by several thousand crores, it would, during the interim, also have led to dislocation of services with serious inconvenience to consumers.

3.18 On 2 August, 1999, the Election Commission of India put out a Press Note which *inter-alia* read as follows:—

"It is clear that the matter involves major policy issues, and has obviously led to various inter ministerial consultations, and Cabinet level decisions. The Commission is surprised and has noted with regret that the Government of India has sent a response which does not give the full picture of the case and vital questions have been left unaddressed. The material provided does not assist the Commission adequately.

The Commission has further noted that the matter is now before a Bench of the High Court of Delhi, headed by the Chief Justice which is actively seized of the matter. The Commission has also noted the comments, observations and allegations as well as rebuttals by different political parties. The Commission is deeply concerned with the implications of changes in policies during the period when the country is in the election mode and is aware of the fact that there are possibilities of such changes vitiating the level playing field in the electoral arena.

Taking into account the background of the case and the fact that it is now engaging the attention of the High Court of Delhi, the Commission hopes that all aspects of the case will be taken into account. The Commission anticipates that not only the matter relating to the financial aspects of the case will be looked into but the urgency of the matter, in the context of the imminent general elections in the country will be fully gone into.

The Commission, in view of the matter lying before the High Court, does not wish, at this stage, to make any further comment on the matter."

Objections to Implementation of Migration Package

Public Interest Litigation

3.19 A Public Interest Litigation challenging the Migration Policy was filed by Delhi Science Forum in Delhi High Court on 28 July, 1999. The main grounds on which the policy was challenged *inter-alia* included:—

- The Government has no authority in law to alter the terms and conditions of licence originally granted so as to confer upon the licensees windfall benefits and largess contrary to public interest.
- The offer dated 22 July, 1999 by Government amounts to putting a premium on defaulters and favouring defaulters, in as much as the Government has allowed large amount of arrears to remain unpaid for considerable period of time, extended the period of the licence and absolved the Operator-licensees from paying the stipulated licensee fee in favour of a greatly reduced revenue sharing arrangement.
- In exercise of its powers under Article 299 of the Constitution of India or in exercise of any other powers enabling the Government to grant licences under the Act, the Government is bound to act in public interest and in a transparent manner and to ensure subserve the common good which it has failed to do.
- That assuming, without admitting, that some of the operators were sick and unable to operate the licences, the Government was duty bound to cancel the licences and re-auction the same in public interest.
- The terms and conditions of a licence granted under Section 4 of the Act can only be altered or modified in exercise of powers under a validly made law.
- In any event, the assumptions on which the said offer has been made do not hold good, as several of the operators, far from being sick, have made windfall profits by raising equity.
- In any event, the Government has acted in indecent haste without due deliberation and failed to impose the necessary precautions to ensure that the operator-licensee do not unduly profit from the offer.

- That the Attorney General in his opinion dated June 6, 1999, recommended that "*a specific condition should be imposed by way of any undertaking from the licensee for a lock in of the present shareholding for a period of five years from the date of the licensee agreement....*".
- The offer departs from the Attorney General's opinion in as much as it does permit the licensees to issue additional equity share capital by way of private or public placement. The effect of such issue would be to result in windfall profits based on the renegotiated licence.
- The offer shall cost the exchequer a loss of Rs. 50,000 crores.
- The offer will result in unjust enrichment to the operator-licensees in as much as they have already reaped the benefits of the licence for a period of three years and have recovered a substantial portion from the consumers (including in the Metros a recent hike in rentals from Rs. 156 to Rs. 600 per month).
- The offer is arbitrary and offends the equality guarantee under Article 14 of the Constitution of India.
- The offer will result in concentration of wealth in a few hands and not subserve the common good.

3.20 The Delhi High Court passed an interim order on 10 August, 1999 to the effect of allowing the Government to permit the Migration Package "subject to the approval of the Council of Ministers after the constitution of 13th Lok Sabha and subject to disapproval, if any, by the Lok Sabha". In terms of the Interim Order of Delhi High Court of 10 August, 1999, the Cabinet again considered the matter in its meeting held on 21 October, 1999. While noting the contents of the order dated 10 August, 1999 of Hon'ble Delhi High Court, the Government considered the matter afresh and endorsed the decision taken earlier in July, 1999 approving the Policy of Migration of the existing operators in terms of the offered package.

Extension of Migration Package to the Operators whose licences stood terminated

3.21 The then Secretary to the Prime Minister in his letter dated 22 July, 1999 addressed to Secretary, the Department of Telecommunications *inter-alia* stated "the Prime Minister has directed that the Department of Telecommunications may seek the advice of the Attorney General in all such cases where action for cancellation of licences/invocation of FBGs has been initiated or is likely to be initiated and review these cases in the light thereof". Pursuant to Prime Minister's directive on 6 August, 1999 the Department of Telecommunications submitted a comprehensive proposal seeking advice of Attorney General of India on the following issues:—

- (a) The licences of certain private telecom operators had been cancelled earlier. Is it legally possible and appropriate to review such cases on the basis of consideration of the representation, if any, submitted by such licensees and other relevant material on record, and revive the cancelled licences if found justified after such review;
- (b) Whether the migration package offered to the existing licensees in terms of the Cabinet approval based on the opinion dated 16 June, 1999 of the Ld. Attorney General, can also be offered to the operators whose licences are revived under (a) above;
- (c) If the answer to issue No. (b) above is in the affirmative, whether any additional conditions are required to be imposed or the same package as has been given to the existing licensees, can be offered to such operators whose licences have been so revived;

- (d) Whether all such operators shall be asked to give any undertaking before revival of their terminated licences and restoration of interconnectivity is considered by the Department of Telecommunications; and
- (e) Any other relevant issue.

The proposal was approved by the Prime Minister who was also Minister of Communications on 10 August, 1999.

3.22 On receipt of opinion of Attorney General of India, a note for Cabinet was prepared on 24 March, 2000 seeking approval *inter-alia* on the following:—

- For extending offer of a package for Migration to New Telecom Policy-1999 regime in respect of licences which stood terminated at the time of offering the Migration Package in terms of Cabinet decision dated 6 July, 1999 in favour of Migration Policy and for this reason migration policy was not extended to such terminated licences.
- To implement the Migration Package in respect of licences where an offer of migration was made but there is a belated acceptance of the package.

3.23 The Union Cabinet in its meeting held on 29 March, 2000 further approved migration to the new policy regime in respect of two operators who had not furnished their acceptance of the migration package in time; and, in respect of six operators whose licences had been terminated.

Justifications advanced for Migration Package

3.24 The Committee recorded evidence of Shri Anil Kumar, then Secretary, Department of Telecommunications during whose period, the proposal for the Migration Package was evolved, approved by the Cabinet and eventually implemented by the Government. The prevalent position at that point of time which ultimately paved the way for offering Migration Package to the existing licensees under NTP-1999 and the justifications adduced by the then Secretary are dealt with in the succeeding paragraphs.

3.25 The then Secretary stated that unfortunately, the licensees were in a very bad health. It was causing concern. Their concern was shared widely by the banking sector, by the industrial sector and by the peoples' representatives. It was felt by all that some relief and concessions were necessary. In his opinion, lack of delivery of the policy framework, which governed the implementation of these licensees was primarily attributable to the fact that the licence fee during the NTP-1994 was fixed and could not take care of the changing market conditions.

3.26 The Secretary's attention was drawn to the view that the concessions that were rolled out to the existing telecom operators to enter into the new regime of NTP-1999 tantamounted to a very unfair treatment to the realistic bidders who may have also joined the telecom sector by making outrageous and unfair bids. They played other serious people out of the market and then after getting the licence, started asking for concessions. While defending the Government's position, the then Secretary put forth the options that were there in front of the Department of Telecommunications at that point of time. One option in the Department of Telecommunications was also to take action against the default which in his opinion was initiated at different points of time. With regard to the question of providing relief to them, he opined that it was clear at that point of time that their sickness demanded some relief and concessions.

3.27 The then Secretary, Shri Anil Kumar stated that the Attorney General of India in his opinion had considered various options with regard to the problems of then existing licensees. The Attorney General of India also went into the suggestion that these people should come

afresh in the bidding, etc. which he said would not have been feasible because there were multiple litigations going on and the existing licensees would have gone out and the situation would have prolonged. The apprehension regarding prolonged litigation was also expressed by the Attorney General in his advise. To further substantiate his point of view he stated *"You are aware that investments flow when there is a litigation free environment, confidence of investor is there, so all those things would have been the casualty"*.

3.28 The then Secretary, Shri Anil Kumar explained the need for a Migration Package by stating that the events were overtaken by the fact that the New Telecom Policy was formulated and it was in the interest of the telecom sector. The existing licensees should be brought under the new frame, which was done under Migration Package and so accrued many advantages of abolition of duopoly, bringing flexibility on the tariff, etc. As the Secretary of that time, he felt that increase in rental as was suggested in the report of BICP would have resulted in further shrinking of the base because of high tariff for airtime usage, and both ways, paying fee.

3.29 The BICP Report stated that the circle operators had anticipated such losses during the initial years of their operation even at the time of bidding. The Committee, therefore, wanted to better understand that when at the time of bidding, losses had been anticipated by the industry, how could it become a trigger for the Government to take a decision on a bailout. Shri Anil Kumar, then Secretary expressed the view that it was on overall consideration of the telecom sector that this migration also was considered. He deposed that basically, at that time, the problems were first voiced more vigorously by the Cellular sector, but then it was thought to let it be applicable to the telecom sector as a whole.

3.30 While elaborating on the situation prevailing during his tenure, the then Secretary, Shri Anil Kumar enlightened the Committee that at that time, because the investors' confidence was shaken, there were a lot of prolonged multiple litigations going on. When the Department of Telecommunications started taking action against the defaulters, it led to litigations. There were umpteen number of cases. Those cases went on. After the Migration Package was approved, thereafter all litigations were taken off which led to a litigation free environment and New Telecom Policy was implemented. He emphatically denied that the Government of the day succumbed to litigation. In fact, he went on to add that no concessions were extended to the then existing operators.

3.31 He also rejected some of the suggestions brought out in the BICP Report which clearly favoured increase in rental, etc. for salvaging the defaulting telecom operators. In the opinion of the then Secretary, these were hypothetical things which would never have been realised.

3.32 The Committee desired to know from the then Secretary whether the idea of inducting the then existing telecom operators in the new regime by payment of only 20 per cent of the arrears was in any way conducive to creating a level playing field. Responding to this query, Shri Anil Kumar elaborately defended the Government's decision and stated that these licensees were already there in the market. These players were facing problems and their problem was well known. To support his view he stated that even the BICP Report supported extension of some concessions and relief to these players. The Government of the day was faced with the question of taking care of all their problems but the wider issue before the Government and the Department of Telecommunications was, what will happen to the future. So, new policy framework was thought of and the Government came to the conclusion that it was necessary. Regarding the question of level playing field, he stated that to the best of his understanding, they cleared, whatever was due from them up to that point of time. He also expressed the view that these players might have been given some time to clear the dues. The Committee were also informed by the then Secretary that in his opinion concessions like moratorium or reduction in entry fee, etc. were not extended to the players and they were brought exactly at par under the New Telecom Policy-1999.

3.33 He was confident that under the then framework of early 1990s the licensees would not have functioned at all. They were defaulters, they would have continued to be defaulters and action against them for default would have led to prolonged litigations. He felt that those recoveries would not have come. Setting aside the apprehension that the Government's decision to allow them to migrate to the new regime had led to a huge loss as suggested by the Comptroller and Auditor General of India, he stated *"Any suggestion to the Committee that there would have been accruals if they had continued for 10 years and they could not continue because we migrated them to a new regime which led to a loss, it is totally misplaced"*.

3.34 While defending the NTP-1999, the then Secretary maintained that the key elements of NTP-1999 provided the flexibility which could not have been introduced till this problem of existing licensees was also resolved. Justifying a need for a relief package for the existing operators, the then Secretary stated *"Our foremost concern always was that the telecom sector should be free of litigation because of which we were not able to move further. To remove those litigations, some sort of a package was necessary. Now, unless the litigations would have been removed, we would not have given new licences"*.

3.35 However, the former Secretary, Shri Anil Kumar emphatically denied that the Government of the day came down under any pressure of these litigations. He further enumerated the gains of the Government by virtue of execution of NTP-1999 *"Duopoly was converted into multi-poly. We could issue more licences and change the tariff, we could have the reforms of the calling party pays. I do not have to say about the results as you are aware of what the results have been in the succeeding years"*.

3.36 While detailing the major disadvantages of the fixed licence regime, he stated that there was no built-in mechanism in the policy framework of NTP-1994 which could provide the cushion to adjust to the emerging market conditions. He explained the situation prevalent during his time as under *"This policy of cellular licence was thought of for big and wealthy business people. It was thought that revenue generated would be about Rs. 30,000 per annum and that is why, it was said that the licence fee for the subscribers from the fourth year would be around Rs. 6000 per subscriber. Now what happened was, tariff was also fixed. There was no flexibility when you found that the revenue was coming down"*. He informed the Committee that he was also a member of the Group on Telecommunications and the Group shared the view that revenue sharing is a concept which is internationally recognised and in most of the places, it was the experience that this has the built-in mechanism that you pay as you earn. Eventually, what happened was that because of the increased volume the earning of the operators also increased and the tariffs came down." Hence, the then Secretary concluded that this policy framework suited better.

Opinion of TRAI on Migration Package implemented under NTP-1999

3.37 While submitting recommendations on Unified Licensing Regime, TRAI in its report dated 27 October, 2003 supported the policy shift effected by the Government from a fixed fee to revenue sharing regime which ultimately resulted in huge growth in the telecom sector. TRAI in its report *inter-alia* observed as under:—

"After NTP-1994 when the Basic and Cellular Services were opened for participation of Private Sector, there was a restriction that one single company may not get licence in more than three category 'A' and category 'B' circles. Initially the decision of the Government was not to permit licences to be awarded across the country to one single entity. The case of Delhi Science Forum and others Vs. UOI which went to Supreme Court is well known. This right as well as decision of the Government was upheld by the

Supreme Court. However, as things stand today, in view of the need to maintain adequate competition as well as to enable viability of the operations of the companies and to build up economies of scale, the Government has allowed entities to have more than three licences across the circles and many operators have now built almost of All India coverage. This shows that the Government, at various times, has modified its decisions in a fast changing scenario and also the mode and method of implementing the objectives set up in its policy. The Licensor took these steps to continuously fine tune these arrangements to ensure that they subserved the end objectives. In fact, the last paragraph of NTP'94 left it to the Government to devise suitable arrangements to implement the policy in a manner that protected and promoted the interests of consumers and ensured fair competition. Subsequently, the migration of Basic and Cellular Operators to a new revenue share regime implemented in NTP'99 reduced the licence fees, eased the burden of heavy fixed fee that the operators had bid and opened opportunities for huge growths in the sector that we presently witness, which the earlier regime would never have allowed. Due to NTP'99 we today witness a win-win situation that due to huge and unexpectedly large subscriber growth the income of the Government in the form of revenue share in a year is more than that would have been with the fixed annual licence fee which was bid by the operators".

Revenue Loss on account of Migration Package

3.38 While rendering his opinion in the context of Migration Package, the Attorney General of India had proposed that the effective date of licensees of Basic and Cellular Operators might be extended across the board in all cases by a period ranging from a minimum of six months and to a maximum of nine months as the Government may decide. This proposal was based on the reason that notwithstanding the fact that the licensees could not as of legal right claim extension of effective dates, but in view of time taken in various Governmental clearances like Standing Advisory Committee on Frequency Allocations, Foreign Investment Promotion Board, etc. some relief was called for. In the note for the Cabinet dated 28 June, 1999 the Department of Telecommunications submitted that this extension in effective date will involve a revenue loss of approx. Rs. 1443.58 crores to the Government by way of reduction in the receipt of licence fee if the extension were to be granted for six months and Rs. 2156.70 crores, if it were for nine months. It was mentioned that this action could invite criticism from audit as also from the public. However, in keeping with the advice of the Attorney General, as also the recommendations of the financial institutions, and the fact that in some cases extension of effective date had been agreed by the Government, it was proposed in the Cabinet note that extension of effective date by a period of six months might be considered across the board for all licences for cellular services in Telecommunication Circles (with the exclusion of Metros) as also in the case of Basic Telephone Services. The proposal was approved by the Cabinet.

3.39 While justifying the aforesaid proposal, the then Secretary informed the Committee as follows *"There was a cost to it. And that cost the Government considered consciously. Yes, it was a cost worthwhile to be met. There were options. We chose an option which may have some cost, we supported that option. But it gave us rich dividends"*.

3.40 Apart from the cost, the Government had to bear on account of the aforesaid modality suggested by the Attorney General of India on account of Migration Package, another issue deliberated in the Committee related to possible loss of revenue to the exchequer in case of continuance of existing licensees in the old regime till the end of licence period rather than shifting them to new regime. In this context, Shri Shyamal Ghosh who was Secretary, Department of Telecommunications after Shri Anil Kumar, while defending the Migration Package stated as under *"To calculate the loss, it would be fair to compare the revenues gained post-Migration.*

I do not have figures on that. The Department probably could estimate what were the revenues collected, what were the licence fees collected post-Migration during the balance period of the licence of the earlier licensees. That would be a fair comparison of apples with apples. The Migration, on the face of it led to certain collections not having taken place and whether those collections would happen or not is a matter of guess. But to be fair, one should also take into account post-migration what were the revenues earned, what were the fees earned through spectrum and licence fee; whether they are comparable or not and above all, what was the growth achieved in this sector as a result of the Migration because as I mentioned, public revenue and public interest do not run hand-in-hand."

Impact of Migration Package

3.41 The Committee desired to know whether the Department of Telecommunications at any point of time calculated the loss to the exchequer due to the Migration Package. The Department of Telecommunications in their written reply submitted that as per the available records, no such calculations had been made by the Department. The Department of Telecommunications have however furnished information indicating impact on licence fee collection and spectrum charges collection due to the Migration Package offered *vide* NTP-1999.

- "(a) The impact on licence fee collection due to Migration Package for Cellular Mobile Telecom Service as well as Basic Service Providers is given in the following table:-

(Rs. in crores)

Licence	Fixed Licence fee for the licence period (A)	Licence fee actually paid by these companies for the licence period (B)	Difference in Fixed and actually paid Licence Fee (C)= (A-B)
CMTS (for 10 year licence period)	30492.12 (#)	11234.90	19257.22
Basic (for 15 year licence period)	27862.50	3595.80 (*)	24266.70
Total	58354.62	14830.70	43523.92

Notes:

- (1) As per the Action Taken Note on C&AG's Audit Report No. 6 of 2000 against Para No. 14.4 (vii), the amount of waiver on account of notional extension of six months in the effective date of licence is Rs. 1187.50 crores (Rs. 841.29 crores for CMTS (Circles) and Rs. 346.21 crores for Basic Services).
- (2) # (i) Includes licence fee committed by metro licensees based on the actual number of subscribers from 4th year onwards [(Rs. 10348.77 crore) calculated on the basis of date of signing of the licence agreement as November 1995].
(ii) The subscriber data has been taken from TRAI who have indicated that for the period upto September, 2001, the data has been sourced from Cellular Operators Association of India
- (3) * (i) For Basic Service Licences, while the committed licence fee is taken upto 2011-12 (for the 15-year licence period), the licence fee paid is upto the year 2009-10.
(ii) Includes entry fee (Rs. 493.46 crore) paid for migration to UASL by the six Basic Service licensees in 2003.

- (b) Spectrum charges collection due to Migration Package for the 1st and 2nd Cellular Mobile Telecom Service Operators is given in the following table:

(Rs. in crores)

Type of Licence	Formula based Royalty & Licence fee towards spectrum usage charges	Actual Spectrum usage charges paid
CMTS (for 10 year licence)	1474.55*	1565# (approx.)

Notes:

- (1)* (i) Total spectrum charges on formula basis for the period from 1 January, 2000 to 31 December, 2004 for 8 Metro cellular licences issued during the year 1994 and for the period from 1 January, 2000 to 31 December, 2005 for 29 Circle cellular licences issued during the year 1995.
- (ii) For Royalty calculations for Telecommunication Circles, it is assumed that maximum spectrum was deployed in major commercial cities only and for rest of the service area, initial start up spectrum was deployed. Major commercial cities are assumed as 10% of the DHQs as per 2001 census data.
- (iii) For Licence Fee calculations in all Circles including Metros, average subscriber base per month is taken as total number of stations including number of base stations. These subscriber base figures were obtained from Cellular Operators Association of India website.
- (2) #Includes payments received towards total spectrum charges i.e. GSM Access, Microwave Access and Microwave Backbone charges during the period from 1 January, 2000 to 31 December, 2001 and 1 April, 2002 to 31 December, 2004/31 December, 2005 (for Metros/Circles)."

3.42 The Committee enquired whether (a) the amount of difference i.e. Rs. 43,523.92 crores was a loss to the Government apart from the revenue foregone (Rs. 1,443.58 crores as mentioned in the Cabinet Note dated 24 March, 2000) due to Migration Package and (b) if not, was this differential figure treated as a part of the entry fee as decided by the Government while offering the Migration Package to the operators. In a written reply, the Department of Telecommunications stated as follows:

- (a) The impact of revenue foregone on account of notional extension of effective date by six months (Rs. 1443.58 crores as indicated in the Cabinet Note dated 24 March, 2000) has been taken into consideration while computing the differential amount of Rs. 43,523.92 crores.
- (b) As per the relevant clause of the migration package, the telecom licensees were to pay "...One time Entry Fee and licence fee as a percentage share of gross revenue under the licence. The Entry Fee chargeable will be the licence fee dues payable as per the terms and conditions of the said licence upto 31 July, 1999, calculated upto this day duly adjusted consequent upon notional extension of the effective date....".

3.43. The Committee further asked the Department of Telecommunications to clarify on the points viz., (i) Whether the amount of Rs. 42,080.34 crores (the amount arrived at after excluding the figure of Rs. 1,443.58 crores from amount of Rs. 43,523.92 crores) was to be recovered in any manner? (ii) If yes, what is the status of recovery of this amount (Rs. 42,080.34 crores)? (iii) If not, how this amount (Rs. 42,080.34 crores) was accounted for in the context of Migration Package. The Department of Telecommunications, in the written reply have furnished following clarifications:

"As earlier intimated *vide para* (a) of the reply to question 50 of Batch No. 2 of JPC, no calculations were made prior to the aforesaid reply to the JPC and the Migration Package did not provide for this amount of Rs. 42,080.34 crores to be recovered. According to the migration package, the telecom licensees were to pay '...one time Entry Fee and Licence

Fee as a percentage share of Gross Revenue under the licence. The entry fee chargeable will be the licence fee dues payable as per Terms and Conditions of the said licence upto 31 July, 1999, calculated upto this day duly adjusted consequent upon notional extension of the effective date...’.

3.44 The Committee subsequently called for details of revenue generated during the post migration phase *vis-à-vis* the revenue that would have accrued had the licensees continued in the remaining period of old regime *i.e.* the end of 10 year period. The Committee also wanted to know whether total revenue generated post migration package (from 1999 to 2005) was more than the revenue that could have generated if the Migration Package would not have been introduced and NTP-1994 had been allowed to be in place till 2005. The Ministry furnished the following information:—

(Rs. in crores)

Year	Total Revenue generated post migration package (from 1999 to 2005) (All Cellular and Basic Service including BSNL and MTNL)			Revenue that could have been generated if the Migration Package would not have been introduced and NTP'94 had been allowed to be in place till 2005 (Cellular and Basic Service).	Difference
(A)	(B) Entry Fee	(C) L. Fee	(D) Total (B) and (C)	(E)	(F)=D-(E)
1999-2000	1700.13*	181.18	1881.31	3022.26	-1140.95
2000-01	0.00	525.83	525.83	3514.18	-2988.35
2001-02	2401.57	4463.90	6865.47	3446.91	3418.56
2002-03	0.00	4419.14	4419.14	4224.01	195.13
2003-04	2679.49	5249.13	7928.62	4274.50	3654.12
2004-05	50.57	5200.81	5251.38	4245.57	1005.81
	6831.76	19689.47	26871.75	22727.43	4144.32

*Amount comprises of (a) Licence fee as on 31.07.1999 amounting to Rs. 1193.85 Crs. (b) interest of Rs. 506.28 Crs.

Note: The figures mentioned in Col (E) include Rs. 2268.41 Crs. For MTNL which has been calculated @Rs. 900 per DEL (the last rate available) for Basic/WLL DELs.

3.45 The Committee have been informed through written information by the Department of Telecommunications that all the outstanding dues in terms of the Migration Package were recovered from the licensees, who were allowed to migrate to NTP-1999.

CHAPTER IV

POST MIGRATION PERIOD

A. Cellular Mobile Telephone Service—Third Cellular Licences

4.1 Erstwhile Department of Telecom Services (DTS) now Bharat Sanchar Nigam Limited (BSNL) was granted CMTS licences for 21 Telecom Circles and Chennai and Calcutta Metros on 29 February, 2000. In terms of Migration Package, after the withdrawal of court cases by CMTS licensees, Mahanagar Telephone Nigam Limited (MTNL) could also provide mobile services in Delhi and Mumbai on the basis of CMTS licences granted in October, 1997. Third cellular operator (BSNL and MTNL) was allotted spectrum initially in 900 MHz band.

B. Basic Telephone Services (BTS) Licences

4.2 The New Telecom Policy-1999 envisaged the opening up of the basic telephone services. In pursuance thereof, a reference was made to TRAI on 23 April, 1999 to give recommendations on the terms and conditions of the licence to be granted for operation of basic telephone services in various circles. Consequent to migration of the existing operators to NTP-1999 regime, a further reference was made on 12 July, 1999 regarding the licence fee and arrangement for the existing operators on their migration to the revenue-sharing regime. TRAI went through a process of consultation with the concerned stake-holders and sent its recommendations to the Department of Telecommunications on 31 August, 2000 for allowing new entrants for providing basic services in all the circles. Considering the limited size of market available to new entrants and paucity of frequency spectrum, TRAI felt that there was no need to pre-determine any number of BTS licences to be issued and limit the competition and that it be left to the market forces to determine the number of licences. However, to preclude non-serious players as was envisaged in NTP-1999, TRAI recommended for laying down stringent criteria for roll-out and stipulation of reasonable level of revenue share, entry fee and Performance Bank Guarantee. TRAI in their recommendation noted that the existing licences for basic services stipulates wireless as the preferred technology for subscriber loop (Local Loop). TRAI further noted that employment of this technology, *i.e.* wireless, would appear to be inescapable if quick roll-out and connection on demand in congested areas is to be given as per TRAI's quality of service guidelines. The Telecom Commission, after considering the recommendations on 21 September, 2000, specifically sought the opinion of TRAI on 9 October, 2000, *inter alia*, on the scope of area of hand-held subscriber terminals under wireless access system operations, the basis for assigning Wireless in Local Loop (WLL) frequency, the amount of entry fee and spectrum charges as a percentage of revenue to be charged from the basic service operators for extending the above facility in respect of existing as well as future basic service licensees so as to ensure a level playing field with the cellular operators.

4.3 The recommendations of TRAI on the issues relating to limited mobility through WLL systems were received in the Department of Telecommunications on 8 January, 2001. TRAI recommended that hand-held sets may be permitted in WLL limited to local area *i.e.* Short Distance Charging Area (SDCA) to ensure clear demarcation between the services provided by cellular operators and basic services. At the same time, TRAI took into consideration the loss of market which the Cellular Mobile Service Operators (CMSOs) may have to face as a result of the introduction of

WLL services with mobility by the BSOs. In order to mitigate the loss, TRAI was in favour of making some necessary policy changes in favour of the Cellular operators and accordingly recommended a reduction in their licence fee, in the form of revenue share from 17% to 12% of the AGR in Metros and Category 'A' Circles, so as to bring the two services at par. It also recommended that CMSOs be allowed 5% of the revenues to cover the costs of bad debts and collection charges. TRAI recommended that the basis of allotment and pricing of frequency spectrum, while being in accordance with the national plan, should be the same for both BSOs and CMSOs. In order to increase competition among BSOs in a service area, TRAI recommended that the CDMA (Code Division Multiple Access) band of 20MHz in the 800/900 MHz band should be distributed among four operators in each Basic Service Area i.e. 5 MHz each. TRAI also recommended to permit the Cellular Mobile Operators to provide fixed phones based on GSM network infrastructure.

4.4 The recommendations of TRAI were considered by the Full Telecom Commission on 24 January, 2001 and the same were accepted. Accordingly, on 25 January, 2001, the Department of Telecommunications issued the Guidelines for issue of licence for Basic Service *inter-alia* permitting the basic service operators to provide mobility to their subscribers with wireless access systems, but limited within the local area i.e. SDCA in which the subscriber is registered (**Annexure-1**). The Department of Telecommunications also effected consequent changes in the licence for the Basic Service Operators. Licensee fee for the Basic service Operators was reduced from 17% to 12% for the 'Metro' and 'A' Category, to 10% for 'B' Category and 8% for 'C' Category Circles. The licence fee, as above, was made applicable w.e.f. 25 January, 2001 to the Cellular Mobile Service Operators. As per the Guidelines, the broad features were as follows:-

- The licensing of BTS was opened on continuous basis.
- Service area-wise Entry Fee for grant of BTS Licences was prescribed in guidelines and was Rs. 497 crore for Pan India.
- The licensees were to be allocated CDMA spectrum for wireless access system in local area on First-Come-First-Served basis.

4.5 Based on these Guidelines, 25 additional BTS Licences were issued in 2001 (17 to Reliance, 4 to Tata and 4 to Bharti). As per records made available, in all, 147 applications for grant of BTS licences were received by the Department of Telecommunications. Out of this, 111 applications were processed on 9 March, 2001. 21 applications received from departmental public sector organisations viz., MTNL, Videsh Sanchar Nigam Limited (VSNL), BSNL & Telecommunications Consultants India Limited (TCIL) were processed on 15 March, 2001 and were rejected with reasons recorded in the file. The remaining 15 applications were processed on 22 March, 2001. According to the Department of Telecommunications, records containing reasons for rejection of other applications could not be traced. Out of these, the applications of M/s. Tata Teleservices Limited were only found complete in all respects and were proposed to be submitted for approval of the Minister of Communications. Deficiencies for other applications were recorded in the file.

4.6 Shri Shyamal Ghosh, the then Secretary, Department of Telecommunications and Chairman, Telecom Commission took a decision on 16 February, 2001 (**Annexure-2**) in regard to dealing with the deficiencies in the applications for grant of BTS Licences, according to which (i) in case of any deficiency in the application, the applicant could be informed with the prior approval of Member (Production) and Member (Finance) to rectify the deficiencies within a reasonable period of time (say 30 days), (ii) in the event of the deficiencies not being rectified within the given time and the applicant not seeking extension of time for valid reasons, the file was required to be submitted to the Chairman, Telecom Commission for considering rejection of application; and (iii) in case deficiencies were rectified and applicant was found eligible, file was required to be submitted to the Minister through Chairman, Telecom Commission for approval.

4.7 As per the decision taken by the then Chairman, Telecom Commission, letters were issued to companies for rectifying the identified deficiencies. During evidence, the Committee desired to know under what authority the then Chairman, Telecom Commission decided to extend time for rectifying deficiencies in the applications as the notified Guidelines for grant of BTS licences dated 25 January, 2001 did not have such an enabling provision. Shri Shyamal Ghosh, the then Secretary, Department of Telecommunications deposed thus: "The Guidelines said that the application should be complete in all respects. Now natural justice demands that you must inform that these are the deficiencies in your application. Thirdly, we were trying to get more people in this sector. It was unrestricted entry. Even if I reject the application, applicant could always come back and if I do not give them the grounds, another incomplete application will come which I would reject."

4.8. Asked further, to what extent, was it justified to act on the principle of natural justice overriding the extant Guidelines, Shri Ghosh stated "Sir, you are right but I am telling you what would have happened. There was no restriction on the numbers. So, if you say that this application is deficient in this way and you rectify within 30 days and the date of rectification will be taken as the date of application, you are not causing any harm to anybody else. It is because the Regulator and the Guidelines said that any number of people who satisfy the entry condition can apply."

4.9 With a noting Director (BS-II) in the Department of Telecommunications submitted a letter from M/s. Tata Teleservices Ltd. regarding Lols issued by the Department of Telecommunications dated 26 March, 2001 for provision of BTS in the service areas of Maharashtra, Punjab and Haryana requesting for extension of validity up to 31 March, 2002, which were originally valid only for three months from the date of issue. In the file the DDG (BS), the Department of Telecommunications had recorded that "It is going to be more than a year as applications were submitted in January, 2001.... The request for extension of validity may not be agreed to." However, then Secretary, Department of Telecommunications recorded in the file, "As regards Maharashtra, Punjab and Haryana, while it is true that we should not keep the Lols open indefinitely, but since we have permitted unrestricted entry in Basic Services, there should be no objection in granting extension as requested for in these three service areas up to 31 March, 2002, stipulating that this would be the last extension" which was approved by the then Minister of Communications on 16.1.2002 (**Annexure-3**).

C. WLL Issue Referred to the Group on Telecom & IT Convergence

4.10 Aggrieved by the decision taken by the Department of Telecommunications on 25 January, 2001 permitting WLL facility to BTS operators, the Cellular Operators Association of India (COAI) and others challenged the decision in the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) on various grounds, particularly that the decision was against the avowed policy, viz. the NTP-1999. On 22 January, 2001, a petition was filed by the Cellular Operators' Association of India seeking a direction that the Telecom Commission should not consider the recommendations of TRAI on the issue of Limited Mobility but no such direction was issued by the Appellate Tribunal. On 29 January, 2001, the Tribunal ordered, "In the meantime, any licence granted will abide by the result of this petition. If any licence is granted, it will contain a clause that the licence will be revoked, if the decision goes in favour of the petitioners in this case. Mr. H.N. Salve, Solicitor General of India, appearing on behalf of the Union of India has suggested this interim order".

4.11 While reviewing the issues arising out of the decision of the Department of Telecommunications to allow Limited Mobility to Fixed Service Providers, the Prime Minister on 23 April, 2001 had directed that the Group on Telecom and IT Convergence (GoT-IT), which was

reconstituted on 10 November, 2000, will consider and submit its recommendations on the following:—

- (a) Whether the New Telecom Policy 1999 permits “Limited Mobility” service to be offered by Fixed Service Providers.
- (b) If it is permitted under NTP-1999, how it can be introduced to be consistent with the principle of level playing field among different categories of operators with the objective of assured services at cheapest possible rates.
- (c) If it is not permitted under NTP-1999, how the policy can be suitably modified to facilitate Limited Mobility to ensure faster achievement of the targets for tele-density as well as rural and remote area telephony at cheaper and affordable rates.

4.12 The GoT-IT submitted its report to the Prime Minister on 26 April, 2001 which was accepted by the Prime Minister on 27 April, 2001. The following were the findings of the GoT-IT:

- (a) Whether NTP-1999 permits “Limited Mobility” service to be offered by Fixed Service Providers.**

The Group noted that under NTP-99, Fixed Service Providers can provide all types of Fixed Services. It was also noted that NTP-1999 enabled the use of Wireless in Local Loop access system by the Fixed Service Providers. The Group noted that Wireless in Local Loop will greatly facilitate the roll out in rural areas at affordable prices. Even in urban areas where it is technically non-feasible to provide wireline services, Wireless in Local Loop is the only option for quick roll out.

Since the issue of offering Limited Mobility to Fixed Service Providers operators was raised before the TRAI, the Group decided that keeping in view the purposive construction given by the TRAI of NTP-1999, permitting WLL technology which holds the potential for providing affordable telecom services and increasing tele-density rapidly, that it was not necessary to reopen the issue of enabling Limited Mobility technology to the Fixed Service Operators. Where technology allows an expanded service to the advantage of consumers, especially in rural areas, the general approach should be to interpret policy so as to permit maximum competition keeping always in view the need for a level playing field.

- (b) The decision whether or not to charge a separate one time entry fee for utilising WLL being, in the opinion of this Group, a matter exclusively in the domain of TRAI [Section 11 (l) (c)], it must rest there.**

The recommendation dated 08 January, 2001 of TRAI, in this regard was that “In the light of above the authority would like to recommend that WLL with Limited Mobility should be provided as part of basic service licence. The entry fee and percentage of revenue share licence fee should not be altered and be as applicable to basic services as at present.”

- (c) Identification of Short Distance Charging Area (SDCA) in terms of rural, semi-urban and urban category.**

The Committee have been informed that the categorization list of SDCAs was published on 9 May, 2001.

- (d) Obtaining undertaking as well as suitable performance guarantees for ensuring compliance with unfulfilled roll-out obligations from an existing licensee company if applying for a new licence.**

In pursuance of the aforesaid recommendation, on 4 May, 2001 the Department of Telecommunications amended Guidelines dated 25 January, 2001 for issue of BTS licences to provide for detailing roll-out obligations with reference to SDCAs. On the

same day, an addendum (**Annexure-4**) to LOI regarding award of licence to provide BTS came to be issued stipulating additional conditions to be complied before signing the licence agreement. The Committee have been informed by the Department of Telecommunications that the additional Performance Bank Guarantees (PBG) against un-fulfilled roll-out obligations were taken while new Access Service licences were issued.

4.13 In its judgment dated 15 March, 2002, TDSAT dismissed the petition mainly on the ground that granting Limited Mobility in WLL was a matter of policy of the Central Government. The scope of the jurisdiction of the Tribunal to interfere with the policy decision taken by the Government was considered to be very limited.

4.14 On appeal filed by the COAI & others against the TDSAT judgment, the Supreme Court of India held that the Tribunal erred in its judgment that it could not review the Government decision to allow WLL service. It held that the Tribunal could do so in terms of Section 14 of the Act and remanded the matter to the Tribunal for reconsideration with special emphasis on the question of level playing field as well as to look into the legality of the Government's decision.

4.15 After re-examining the matter, TDSAT, through a majority judgment dated 8 August, 2003, upheld the validity of the action taken by the Department of Telecommunications but desired the Government to initiate action to levy additional entry fee, since the service that was being allowed was in the nature of a value addition to the original licence. It directed that the determination of additional entry fee should be done by the telecom regulator. An extract of Majority Judgment of TDSAT dated 8 August, 2003 is placed at (**Annexure-5**).

4.16 Accordingly, the Department of Telecommunications *vide* its letter dated 18 August, 2003 sought TRAI's recommendations based on the above judgment of TDSAT.

4.17 On 27 October, 2003 TRAI gave its recommendations on WLL (M) issues. TRAI recommended as follows:—

- (a) Additional entry fee be levied for certain circles on the Basic Service Operators providing the WLL (M) service, as below:-

Sl.No.	Service Area	Additional entry fee (Rs. in crore)
1.	Delhi	69.75
2.	TN Including Chennai	55.81
3.	Maharashtra including Mumbai	44.80
4.	Punjab	19.03
5.	Karnataka	3.6
6.	WB including Kolkata	28.07
Total		221.03

- (b) The additional entry fee for WLL(M) should be paid only if the Basic Service Operator provides the WLL(M) service. If the WLL(M) service is not provided by the Basic Service Operator, no additional entry fee for WLL(M) should be charged.
- (c) TRAI was of the view that spectrum is a very scarce national resource and will have to be priced always keeping in view its demand and proper utilisation. TRAI at that stage did not want to give any recommendation on allotment of frequency to Basic Service Operator for WLL operation beyond 5 MHz without going into detailed studies on effective utilisation of the spectrum.

D. Violation of Licence Agreement by WLL (M) Operator

4.18 In their written communication, TRAI informed the Committee that M/s. Hutchison Essar Telecom Limited vide its letter dated 16 May, 2003 had brought the issue of M/s. Reliance Infocomm Limited, a Basic Service Operator licensee, offering mobility even beyond the SDCA to the notice of the then Authority. TRAI vide its letter dated 11 June, 2003 had sought comments of M/s. Reliance Infocomm Limited on the issue. On 18 June, 2003, M/s. Reliance Infocomm Limited replied to the communication from TRAI. Subsequently, various stake-holders had represented to TRAI regarding the offer of multiple registration/roaming service/call forwarding by the Basic Service Operators in their representation to TRAI. In their representation to TRAI, the stake-holders had mentioned that Basic Service Operators were offering effectively both intra-circle as well as inter-circle roaming service like facility to its WLL(M) consumers by using multiple registration combined with call forwarding facility, while in terms of stipulation in the licence agreement, a subscriber to WLL(M) service was mandated to remain continued within the SDCA in which a person had been registered. The stake-holders had represented that if the WLL mobile subscriber could make calls while outside his registered SDCA and if he could receive calls made on his original number while he was outside the registered SDCA, then he was availing of roaming like services and the provision of such a service was illegal under WLL(M). This complaint was reportedly investigated by TRAI. TRAI vide its letter dated 14 August, 2003 (**Annexure-6**) written to the Department of Telecommunications *inter-alia* stated "Considering the implications of combined effect of multiple registration and inter SDCA call forwarding and also keeping in mind the above TDSAT ruling, it is recommended that the licensor issues clarificatory order/amendment to Basic Service Operator's licence agreement, which prohibits multiple registration or inter-SDCA Call forwarding to and from WLL(M) subscribers or both so that the basic service licence conditions of Limited Mobility within SDCA was not violated by any Basic Service Operator under any circumstance."

4.19 TRAI in its report dated 27 October, 2003 mentioned that M/s. Reliance Infocomm Limited, one of the country wide Basic Service Operators, had been advertising its services as if the service was a full cellular Mobile Service without any restriction of mobility. It had been doing it by obtaining a licence as a Basic Service Operator almost throughout the country and using multiple registration/call forwarding facility. This according to TRAI implied that right from the effective date of the licence agreement, M/s. Reliance had competed as a cellular mobile service provider with just one exception — that the service dropped at the time of moving from one SDCA to another. However, for unified licensing, TRAI considered that since M/s. Reliance Infocomm Limited by virtue of offering mobility even beyond SDCAs had acted like a cellular operator right from the day of signing the licence agreement, M/s. Reliance Infocomm Limited was liable to pay the penal interest *w.e.f.* the date of signing its licence agreement till the date of migrating to the Unified Access Service Licence Regime in addition to the entry fee paid by 4th Cellular Operators in respective circles. TRAI had accordingly recommended that M/s. Reliance Infocomm Limited have to pay Rs. 1096 crore as entry fee for migration to UASL Regime and in addition pay penal interest to the tune of Rs. 485 crore for offering cellular types services.

4.20 On 10 September, 2003 the Government constituted a Group of Ministers (GoM) on telecom matters under the Chairmanship of Minister of Finance. The Ministers of Defence, Law & Justice, Commerce and Industry, Communications & Information Technology and External Affairs and the Minister of State (Independent Charge) of the Ministry of Information and Broadcasting were its members. One of the terms of reference of the GoM was to review adequacy of steps for enforcing limited mobility within the SDCA for WLL (M) services of Basic Operators and recommend the future course of action. The GoM submitted its report to the Government on 30 October, 2003. The Group noted that the Telecom Dispute Settlement and Appellate Tribunal judgment of 8 August, 2003 had clearly indicated that limited mobility under

WLL(M) by the Basic Service Operators should be strictly confined to the Short Distance Charging Area (SDCA) and handover should not take place under any circumstance while travelling from one SDCA to another. Also that a clear distinction should be made between such a service and the cellular mobile service. The TDSAT judgment had also indicated that the WLL(M) service was a value added service in the Basic Service Licence.

4.21 The Group also took note that while in the case of five Basic Service Operators, namely, MTNL, BSNL, TATA's HFCL and Sham, the mobility was being restricted to SDCA one of the operators namely, Reliance was offering service whereby a subscriber registered in a particular SDCA can move to the other SDCAs and get his handset activated over the air by pressing *444N (where N is number of days for which the service is required in that SDCA) without any loss of time (around one minute). Also, it had come to light that in some cases at the time of registration in SDCA, a subscriber was simultaneously given the telephone numbers for adjacent SDCAs. These facilities had been given the nomenclature of multiple registration and temporary subscriber service. The mobility being provided using these features had in effect changed the character of the Basic Service Licence and thus was in violation of the spirit of the licence.

4.22 The Group desired that in this background steps should be taken to stop the violation and thereby ensure the enforcement of the TDSAT judgment in regard to restricting mobility within the SDCA. The Group took note that Department of Telecommunications proposed to issue notices to the Reliance Group companies to discontinue the following features that blur the distinction of WLL(M) and Cellular Mobile Services:

- (i) Over the air activation/authentication of the subscriber wireless access terminal outside one SDCA by pressing/punching certain keys/numbers such as *444N;
- (ii) Use of the same subscriber wireless access terminal in more than one SDCA; and
- (iii) Multiple registration or temporary subscriber facilities in more than one SDCA using the same subscriber terminal in wireless access system.

4.23 The GoM also recommended that the recommendations of TRAI in regard to additional entry fee payable by Basic Service Operator for providing WLL(M) service on which Government sought its recommendations based on the judgment of TDSAT dated 8 August, 2003 in the WLL(M) case be accepted.

4.24 The Union Cabinet on 31 October, 2003 accepted all the recommendations of GoM pertaining to WLL(M) as recommended by TRAI in its reports dated 27 October, 2003 relating to Unified Licensing Regime and WLL(M) issues based on TDSAT's order.

E. Roll-out Obligations for Rural Telephony

4.25 As far as roll out obligations for rural telephony is concerned, it was clearly prescribed in clause 2.3 of terms of financial bid of tender document for provision for Telecom Service licences issued in the year 1997-98 for operation of BTS. Service providers were required to commission at least 10% of total Direct Exchange Lines (DELs) provided in each quarter as Village Public Telephones (VPTs). Violation of roll out obligations could lead to cancellation of the licence. TRAI in its recommendations dated 31 August, 2000 defined roll-out obligations in terms of establishment of at least one Point of Presence (PoP) in SDCAs of the Service Area. TRAI was of the view that such obligations would be better fulfilled by the service providers voluntarily rather than through a conditionality of the licence, which thus far had not been found to be enforceable. While considering the recommendations of TRAI, the Telecom Commission then took a decision to dispense the roll out obligation for rural telephony and add

a clause in the licence terms and conditions that service providers should be required to maintain a transparent, open to inspection waiting list. The Guidelines for BTS thus issued on 25 January, 2001 completely dispensed the roll out obligation for rural telephony on the part of the service providers.

4.26 While explaining the stance of the Department of Telecommunications on the roll-out obligation, Shri Shyamal Ghosh, the then Secretary, Department of Telecommunications stated that the Guidelines of 2001 were based on TRAI's recommendations. He also stated that Point of Presence meant establishing the switch and the "Telephone on Demand" was another provision within these Guidelines. So, if an operator provided a switch then he was to develop the capability of dealing with new connections within that service area. Hence, anybody who wanted a connection would get it and the same would come not through wireline but it could come through WLL also. He supported the Guidelines and said that there was no deviation from the TRAI recommendations and roll-out was in terms of establishing Point of Presence in Short Distance Charging Areas in proportion to rural, semi-rural and urban areas. All the areas had to be covered. This, in his opinion, was a much better way of doing it.

F. Entry of 4th Operator — Cellular Mobile Telecommunication Service (CMTS) Licences

4.27 Pursuant to NTP-1999, the Department of Telecommunications sought recommendations from TRAI on issues pertaining to (a) appropriate level of Entry fee, and basis of selection of new operators and entry of fourth operator; (b) percentage of Gross Revenue as licence fee; (c) definition of Gross Revenue; and (d) any other issues considered relevant. On 23 June, 2000, TRAI forwarded its recommendations to the Department of Telecommunications. The salient recommendations were as follows:-

- (a) In so far as licence fee is concerned, TRAI recommended that Department of Telecommunications/MTNL as third operator as well as the fourth operator would be required to pay the same licence fee as is being recommended for the existing CMSPs who were being allowed to migrate to revenue sharing arrangements.
- (b) All new operators barring Department of Telecommunications/MTNL would be selected through a competitive process, by a multistage bidding process preceded by prequalification round. The prequalification would be on grounds of financial strength and experience of telecom service provider, minimum roll out obligation, its technical and business plans and payment terms and other commercial conditions. TRAI recommended a 'multistage informed ascending bid'. It felt that revenue sharing is a better basis on which to invite bids for licences and not entry fee but given the circumstances where the incumbent operators had already been selected through a bid process, the same had to be applied to the fourth operator. TRAI recommended that the number of licences that can go to a single bidder need not be restricted.
- (c) TRAI also stated that more than the market, the determining factor has to be the availability of spectrum and its optimal utilisation and that a fair balance between the two objectives of increasing competition on the one hand and improving the quality, coverage and price efficiency of service on the other will have to be struck. It felt that a view in the matter can be taken only after getting a full report from the Department of Telecommunications on the quantum of spectrum being made available to the CMSPs and whether it is going to be in the 900 MHz or in 1800 MHz band.
- (d) As regards the revenue share as licence fee, TRAI was of the opinion that the licence fee should cover the cost of Universal Service Obligation (USO), Research & Development (R&D) and administrative regulation and a reasonable amount of rent.

It was of the opinion that the revenue share parted with as licence fee has also to represent a payment for frequency spectrum and that it should be seen as a price for the opportunity of using the spectrum in the present situation of limited competition. TRAI stated that licence fee was not being recommended as a means of raising revenue. It also rejected the argument that the licence fee should only cover the cost of administering the licence.

- (e) After analysing the business plans and assessing the feasible RoE (Return on Equity) and IRR (Internal Rate of Return) for the service providers, the Authority recommended a revenue share of 17% of the Adjusted Gross Revenue (AGR) as Licence Fee except in respect of A&N and J&K circles where it recommended 10%.
- (f) The Authority also gave a definition of the Adjusted Gross Revenue.
- (g) On the entry of fourth operator, TRAI felt that on purely economic grounds, in most Circles there was a fair case for the entry of the fourth operator but more than the market, the determining factor had to be the availability of spectrum and its optimal utilisation. It felt that a view in the matter can only be taken after obtaining the details on the quantum of spectrum being made available to the CMSPs and its frequency bands - 900 MHz or 1800 MHz.

4.28 The recommendations of TRAI were approved by the Telecom Commission with some modifications as to the definition of Gross Revenue. Based on the same, on 5 January, 2001 the Department of Telecommunications announced Guidelines for issue of licence for CMTS. 17 new CMTS Licences were issued to private companies as 4th Cellular Operators in September/October, 2001 one each in four metro cities and 13 telecom circles. These licences were awarded through a multi-stage bidding process for an initial period of 20 years and extendable by 10 years at one time. Spectrum was bundled with the Licence and no separate upfront fee was charged for the spectrum. No licence could be given in the service areas viz. Bihar, Odisha, West Bengal and Andaman & Nicobar as no bids were received in these service areas. The licences were given at an entry fee given in the table below:-

Entry Fee

(Rs. in crores)

Sl. No.	Service Area	Category	Entry Fee 2001	Sl. No.	Service Area	Category	Entry fee 2001
1.	Delhi	Metro	170.7	10.	Kerala	B	40.54
2.	Mumbai	Metro	203.66	11.	Punjab	B	151.75
3.	Chennai	Metro	154.00	12.	Haryana	B	21.46
4.	Kolkata	Metro	78.01	13.	UP (West)	B	30.55
5.	Maharashtra	A	189.00	14.	UP (East)	B	45.25
6.	Gujarat	A	109.01	15.	Rajasthan	B	32.25
7.	Andhra Pradesh	A	103.01	16.	Madhya Pradesh	B	17.450
8.	Karnataka	A	206.83	17.	Himachal Pradesh	C	1.1
9.	Tamil Nadu	A	79.00	Total			1633.57

4.29 A cumulative maximum of upto 4.4 MHz + 4.4 MHz was permitted. Based on usage, justification and availability, additional spectrum upto 1.8 MHz + 1.8 MHz making a total of 6.2 MHz + 6.2 MHz, could be considered for assignment, on case by case basis, on payment of additional Licence fee. The bandwidth upto maximum as indicated i.e. 4.4 MHz & 6.2 MHz as the case may be, was to be allocated based on the technology requirements. It was stipulated to have spectrum charges @ 2% of AGR for cellular spectrum upto 4.4 MHz (paired). Additional bandwidth shall attract additional fee as revenue share. Typically 1% additional revenue share (total 3%) if bandwidth upto 6.2 MHz is allotted in place of 4.4 MHz. Fourth Cellular Operators were allotted spectrum in 1800 MHz band.

G. Allocation of Additional Spectrum

4.30 In the context of giving additional frequency to the cellular operators, particularly those facing problems in Delhi and Mumbai, the then Chairman (Telecom Commission) submitted a note to Minister of Communications & Information Technology on 10 January, 2002 which read as follows:

"MOC&IT had desired that we should examine the question of giving additional frequency to the cellular operators, particularly those facing problems in Delhi and Mumbai.

2. The question of optimal utilization of frequency has been under our consideration for some time. The Telecom Engineering Centre had been asked to review the position in this regard. The Report prepared is at Flag 'A'. It would be apparent from the Report that there is no immediate need for additional spectrum if the allocated spectrum is optimally utilized with better network configuration by decreasing the cell size and decreasing the distance between these cell sites to about half a kilometer. In paper planning, it would be possible to sustain even a larger subscriber base with the existing allocation of spectrum.

3. However, it is a fact that during the course of the next year or so, if the present growth rate of subscribers is sustained, it would be necessary to give additional frequency. In the 900 MHz GSM band, we have given to three operators at the rate of 6.2MHz per operator. The balance has been given to Railways (1.8 MHz.) and the rest are with Defence. Similarly, in the 1800 MHz band, we have been able to earmark 10 MHz. for the cellular operators apart from the band made available for WLL. Of this 10 MHz., we have given 6.2 MHz to the Fourth Operator. There is about 65 MHz. presently under use of Defence. I have asked the Wireless Advisor to analyse the manner of usage by Defence and Railways, particularly with a view to ascertaining as to whether additional frequencies could be made available in Delhi and Mumbai. This is so because the immediate concern is relating to these two Metros.

4. Another related issue is the additional charges to be recovered for allocation of additional frequency. At the moment, we have prescribed 2% of revenue share for frequency upto 4.4 MHz. and an additional 1% for frequency upto 6.2 MHz. In addition, the operators have to pay certain microwave access charges. However, the cellular operators are not satisfied with these rates and are having further discussions in this regard with Member (P).

5. For frequency allotment beyond 6.2 Mhz. perhaps the better option would be to impose an additional allocation fee rather than increasing the revenue share. The benchmark for the additional fee could be the entry fee in respect of the Fourth Cellular Operator for Delhi and Mumbai pro rated for the frequency allotted. However, details in this regard are being finalized separately.

6. The above is being submitted for present information of MOC&IT. A final Paper in this regard will be prepared separately and put up shortly."

4.31 Thereafter, the then DDG (VAS) *vide* note dated 31.01.2002 submitted a note to Chairman (TC), [Mentioning that Wireless Advisor was retiring that day and Member (P)/(F) was out], as reproduced below:—

"The matter regarding allotment of additional spectrum beyond 6.2 Mhz. in 900 MHz. band to the existing cellular operators was further discussed today, at length. It was felt that there would be need to allocate additional spectrum in Mumbai & Delhi Metro Service Areas soon, where congestion as well as drop in quality of service has been reported by the cellular operators. *[The report of the committee of Sr. DDG (TEC) states (para 18 of report) about congestion and other problems. Sr. DDG (TEC) has carried out testing of congestion etc. in Delhi networks and would be shortly sending a report as informed by him.] One operator has reached nearly 5 lakhs subscribers in Delhi and other operators in Delhi & Mumbai are expected to reach the level of 5 lakh customers in a few months time; they are at present approaching towards a customer base of 4 lakhs. Therefore, a consensus has emerged after discussions that additional spectrum to the tune of 1.8 Mhz (paired) in 1800 Mhz. band may be allocated on case to case co-ordination basis to the operators after they reach the level of 4 lakhs customers, if a request is made in this behalf. However, the actual release of spectrum should take place only after a customer base of 5 lakh is reached in the service area under a particular licence. This would add to a total spectrum of 8 MHz (paired) to such operators.

As regards charges for the additional spectrum, it is recalled that consequent to change over to revenue sharing regime, 2% of revenue (AGR) is charged for GSM spectrum upto 4.4 MHz (paired) & additional 1% of revenue is charged for additional spectrum of 1.8 Mhz. (paired). On the same analogy, further additional spectrum charge of revenue (AGR) would be levied for spectrum beyond 6.2 Mhz. However, at present spectrum upto 1.8 Mhz. (paired) only will be allocated/assigned as stated above. In future, it may be possible to allot further spectrum subject to availability to add to a total of upto 10 Mhz; this would be only after a suitable subscriber base is reached.

The above scheme was also discussed by Member (F) with officers from WPC & he was agreeable to the scheme (he has gone out of station in the afternoon).

Submitted for approval."

4.32 On the above note of DDG (VAS), Chairman (TC), on 31 January, 2002, noted that "For allocation of spectrum beyond 6.2 MHz. and upto 10 MHz., additional 1% revenue sharing would imply total spectrum charge @4% of Adjusted Gross Revenue for such Cellular Operators." and sent the file to Minister of Communications [mentioning that Mos (C) was "away"].

4.33 The above proposal was approved by the then Minister of Communications on 31 January, 2002. On 1 February, 2002, Department of Telecommunications issued order on allocation of additional radio frequency spectrum to the CMTS providers. (**Annexure-7**)

4.34 To a query by the Committee as to why the matter regarding allocation of additional spectrum was not referred to TRAI, Shri Shyamal Ghosh, the then Secretary while explaining the practice being followed in the Department submitted that as far back as in 1996, a decision was taken by the Department that additional spectrum upto 6.2 MHz. could be given based on justification. Spectrum management and other related matters, according to him, were always being handled in the Department of Telecommunications. It was in that context that a reference was made to the Committee set up under the Senior DDG, Telecom Engineering Centre to give us their views as to what would be the best way of going forward in giving spectrum.

4.35 As per information made available to the Committee, a Technical Committee formed on 23 October, 2001 gave its recommendations on 21 November, 2001. The Committee recommended that 6.2 MHz spectrum was sufficient for a subscriber base of about 9 lakh per operator in service areas like Delhi & Mumbai and it would be sufficient for another 24 to 30 months, provided the networks were planned optimally.

4.36 He added that further even this 6.2 MHz. given on justifiability, had entailed an additional revenue to be paid, which was prescribed in 2001, and again while going back a little in history, he stated that the spectrum charges were based on a formula which the Wireless Advisor implemented based on certain distance criteria and other criteria. It was creating problems because at that time that formula was city based while the licences in most cases were given circle based. So a decision was taken in the Department of Telecommunications to move to a revenue sharing regime in this regard and this revenue sharing regime stipulated upto 4.4 MHz., two percent of revenue and additional one percent of revenue once it went beyond two percent to 6.2 MHz.

4.37 He mentioned that TRAI also recommended that basis for allotment and pricing should be the same for both the BSOs and the Cellular Mobile Services in CDMA and GSM bands. So the fact that spectrum was being given based on justification was being fine-tuned every time. First, it was on a formula of the Wireless Advisor. Then, it was based on justification. What was attempted in 2002, according to him, was to bring out transparency and efficiency in the matter of allocation. He justified the practice by stating that transparency and efficiency was linked to the subscriber base because once you reach a particular subscriber base, you cannot have further growth because congestion takes place and TRAI has been repeatedly saying from middle of 2000 that there is congestion, allot more spectrum and you must first deal with the congestion problem. The Technical Committee, according to the then Telecom Secretary, recommended a subscriber base option and it also said that subscriber base option should be utilised for giving this limited resource.

4.38 The Secretary stated that spectrum was being managed by the Department till the point of time when he was there and TRAI had given its views as to how spectrum should be managed in a broad manner. Giving an illustration about the allocation of additional spectrum he *inter-alia* stated as under: "...to give an illustration-4.4 MHz entailed 2 per cent; 6.2 MHz entailed 3 per cent; upto 10 MHz. entailed 4 per cent; and in the CDMA WLL 5+5 MHz. entailed 2 per cent of revenue."

4.39 He further stated that there was no question of referring this matter to the TRAI because the Act, as was explained earlier, mandated certain things which had to be referred. On other things, this was in the domain knowledge of the TRAI that spectrum was being given at that rate. They have taken note of it, even in their 2001 recommendations. So, if they found anything wrong they could have made *suo motu* recommendations also. They did not make any *suo motu* recommendations. Nor was it necessary to do so. But if the TRAI had reservations, they had every right to come back and point it out.

4.40 The Committee sought to know from the then Secretary, as to why, such an important decision was taken in a single day when most of the officers who mattered in the decision making were not present. Responding to the apprehension of the Committee, Shri Shyamal Ghosh defended his position by stating that the said decision was not taken in one day, it was taken based on facts which had developed over a period of more than a year. It was a matter which was being pressed at each instance by TRAI that they will consider additional licensees only if the Department of Telecommunications took care of the problems of existing operators. Shri Ghosh further elaborated that the problem was primarily faced in metros in Mumbai and

Delhi. The operators in those metros were really saying that the network was choked; quality of service was absolutely below the acceptable limits; call dropping was taking place; signal was not going through inside. So, there was need for meeting the metro requirements. According to him, this was the urgency at that point of time. Shri Shyamal Ghosh, the then Secretary, Department of Telecommunications stated that the process of the need for allocating additional Spectrum was brought to the notice of the Department by TRAI and the operators from as early as June, 2000. He stated that the fact remains that the Department of Telecommunications were not able to give this. Explaining his case further, he stated "In fact, I would probably be vulnerable to a charge as to why it was delayed. Since 2000 this was with us, why was this issue not addressed?"

4.41 Shri Ghosh shared the prevailing situation at that point in time and said that the Department was struggling to find additional Spectrum. The Spectrum in GSM-900 Band, hardly 25 MHz. was available and 3 operators had already taken away 18.6 MHz. This matter had been under discussion and examination of the Department for a fairly long period of time. Then, the Committee under the Telecom Engineering Centre was set up in October 2001. The Committee went into the technical modalities and suggested two things. One is with the Spectrum which was available, in certain congested areas there were problems. Secondly, after examining all the issues, they said that the existing Spectrum can continue upto 9 lakh subscribers. But, you should give them Spectrum one year before it reaches 9 lakhs. Now, the Committee's perception was that 9 lakhs would be reached after 24 to 30 months. But, with the growth, which was taking place, we anticipated that it would be reached much earlier. So, to ensure that the growth is not stopped, it was decided that on reaching 4 lakh you can apply. Allocation was given after you reach 5 lakh and that allocation was given, I presume, sometime in the middle of 2002. The 9 lakh subscribers level was reached in early 2003, which was within the one year period. He elaborated further that one year is required for setting up the infrastructure, procuring equipment, mobilization and planning of the network. Even the Telecom Engineering Centre had proposed that one year.

4.42 The Committee particularly noted that there was a clear divergence in the view of the Secretary between the note dated 10 January and that of 31 January, 2002. Apparently, there was a complete transformation in the views within a matter of 20 days.

4.43 Explaining his position, Shri Shyamal Ghosh, the then Secretary, Department of Telecommunications stated that the note dated 10 January, 2002 mentioned that this was discussed with Member (Finance), members of the Wireless Division, officers concerned and they had come to a certain conclusion. Based on those conclusions, it was submitted where Member (Finance) was very much present in the discussions. He explained that, it happens in Government that if an officer is away and he has discussed it and it has been properly recorded, it is shown that he is not there and it goes to the next higher level. In the instant case, his view was that it happened like that. He further supported his view by stating that the matter was delayed, there was an urgency to take a decision and operators had reached choking point in certain network points. That is why, it was done.

4.44 The Secretary explained that the said note was not recorded in isolation. It was a note indicating the status at that point of time that there was need to allocate additional spectrum. A committee had been appointed and the committee's recommendations were being examined. He further explained that an observation was made and that observation continued when this decision was made that if Department of Telecommunications allocated the Spectrum at that point in time, it could not be used in future. It required an year's time which even the Telecom Engineering Centre had acknowledged in its report that you have to procure equipment; you have to set up the network; you have to acquire sites. So, the earlier it was given, the better

it was for planning the network in the optimal and efficient manner whereby the problems of subscribers or new subscribers would be addressed at the earliest. So, decision required to be taken earlier than later to allow the one year time. According to him, that was an approximation- it could be a little more or a little less- for the mobilization of resources to plan the network in the best manner for addressing the needs of the subscribers.

4.45 He emphatically stated: "As far as I recall, particularly in my cases and in most of the cases in the Department, you would like to clear the papers as soon as they came. This was under discussion, certain decisions had been arrived at and the officers concerned were present at that point of time. This was only the rectification of the decision which had been arrived at. There was an element of urgency for finalizing this. So, it was in that context that it was done."

4.46 As per information made available, an order issued on 22 September, 2001 formulating the procedure for allotment of additional Spectrum over and above the start up Spectrum of 4.4 MHz plus 4.4 MHz states that the allotment of additional Spectrum shall be subject to availability and justification. The Committee drew attention of the Secretary to the fact that the justification was subjective only; not objective. Since it was subjective, it eluded fairness and transparency.

4.47 Shri Shyamal Ghosh, while justifying the allocation of additional spectrum stated that the additional spectrum was being given since 1996 based on justification. He further stated that during his tenure, it was linked to the subscriber base. Once you reached the prescribed subscriber base, then there is a way forward that you might get additional spectrum subject to availability. So, the whole thing, according to him, was done in a manner that as soon as Department of Telecommunications got some spectrum there would be a criteria for allotting that spectrum and there would be a price for allotting that spectrum. It was the question of transparency and efficiency. It was also efficient in the sense that if a telecom operator had more subscribers, then there would be need for more spectrum. So, the operator, in his opinion, would be getting more spectrum.

4.48 While delineating the trend in the decision making in Department of Telecommunications, Shri Shyamal Ghosh further informed the Committee: ".....we moved away from a subjective thing, as you rightly pointed out, to a transparent, objective mechanism for allotting additional spectrum. In fact, this was another reason of urgency for settling this matter in 2002."

4.49 The Committee have been informed that the Department of Telecommunications was of the opinion that allocation of additional spectrum should be need-based, and the need-based criteria should be spelt out in objective terms.

4.50 The then Secretary, Shri Shyamal Ghosh opined that a lot of initiatives were taken at the level of the Group of Ministers, and at various levels. But at that point of time it was to spell out what is justifiable that the subscriber base link was established.

4.51 Shri Shyamal Ghosh, further justified the formula adopted for allocation of additional spectrum: ".....the Telecom Commission had considered the revenue sharing regime earlier and prescribed a certain formula, and that formula included that 4.4 Mhz.+ 4.4Mhz. will be 2 per cent; then down the line, the Government decided and TRAI recommended that there should be level-playing field between CDMA and GSM bands. Sir, if 5+5 MHz is 2 per cent, which was approved earlier, then the extension of that logic was 10+10 MHz. will be 4 per cent."

CHAPTER V

UNIFIED ACCESS SERVICE LICENCE REGIME

A. Unified Access Service Licence (UASL) Regime

5.1 Some years into the implementation of the New Telecom Policy, 1999, TRAI took cognisance that the rapid technological developments in the field of communications increasingly enabled services covered under one licence to be provided by another licensee. Although, till then several services such as Radio Paging, Audio Text Services, Video Conferencing, Data Services, Video Text Services, Electronic Mail, Voice Mail, etc. were identified as independently licenced services under NTP 1994, these had faded due to the technological developments in the services of other licences.

5.2 Noting that such separation of licences was posing a risk to the investment and might lead to a future demand on Government for compensation, TRAI felt that there was no justification in continuing a service-wise licensing regime and that efforts should be made to develop an environment which fosters innovation and technology evolution.

5.3 In this backdrop, TRAI floated a consultation paper on 16 July, 2003 and set the ball rolling towards the introduction of Unified Telecom Licensing in India. Later, as mandated by Section 11 (1) of the TRAI Act to make recommendations on any matter concerning the Telecom Sector, either *suo motu* or on request from the Government, on 27 October, 2003, TRAI gave its *suo motu* recommendations in the context of technological developments in telecommunications and blurring of differences between wireless and wireline systems resulting in a need to take a re-look at the service-centric licensing.

5.4 These recommendations were also in the context of finding an appropriate strategy for meeting the target of 100 million subscribers by 2005 and the investment required for it. It was felt that the then licensing regime should be replaced by a unified regime for all services and geographical areas using any technology and leaving it to the service provider to use the best technology at all times.

5.5 The pivot of the recommendations by TRAI was that the then system of licensing in the Telecom Sector should be replaced by Unified Licensing/Automatic Authorisation Regime. The Unified Licensing/Automatic Regime was recommended to be achieved in a two-stage process with the Unified Access Regime for Basic and Cellular services in the first phase recommended to be implemented immediately. This was to be followed by a process of consultation to define the guidelines and rules for achieving a fully Unified Licensing/Authorisation Regime. TRAI recommended that it will enter into a consultation process so that the replacement of the existing licensing regime by a Unified Licensing Regime gets initiated within 6 months.

5.6 The important recommendations of TRAI in regard to the Unified Access Licensing (basic and cellular mobile) were as under:—

- TRAI recommended that within six months the “Unified Licensing” regime should be initiated for all services covering all geographical areas using any technology. The regime would be finalised through a consultative process, once ‘in principle’ approval is received from the Government. Initiation meant that TRAI would submit its recommendations on this issue to the Government.

- The Guidelines would be notified by the licensor based on TRAI recommendations to include nominal entry fee, Universal Service Obligation (USO), etc. The charges for spectrum shall be determined separately. The operator shall be required to approach the licensor mainly for spectrum allocation.
- Unification of access services at circle level be taken up immediately followed by fully unified licence/Authorisation regime.
- Existing operators would have the option to continue under the present licensing regime (with present terms and conditions) or migrate to the new Unified Access Licensing Regime in the existing circles.
- In the Unified Access Licensing Regime, the service providers may offer basic and/or cellular services using any technology. Existing BSOs may offer full mobility in the circle under the Unified Access Licensing Regime.
- The existing entry fee of the fourth Cellular Operator would be the entry fee in the new Unified Access Licensing Regime. BSOs would pay the difference of the fourth CMSP's existing entry fee and the entry fee paid by them. This may be accepted for fixing the entry fee for migration to Unified Access Licensing regime for Basic and Cellular services at the circle level.
- Under intra-circle Merger & Acquisition (M&A) case, the allocated spectrum to merging operators would also get merged subject to specified principles to be evolved. Beyond the present spectrum allocation, there should be a different spectrum-pricing regime to improve the efficiency of Spectrum utilization. TRAI was not in favour of high spectrum pricing, since such a regime will make the services more expensive and the desired growth will not take place in telephony.
- On spectrum related issues, it was stated that TRAI shall provide its recommendations on efficient utilisation of spectrum, spectrum pricing, availability and spectrum allocation procedure shortly. The Department of Telecommunications may like to issue spectrum related Guidelines based on the recommendations submitted by TRAI. Service Providers migrating to the Unified Access Licensing Regime will continue to provide wireless services in the already allocated/contracted spectrum and no additional spectrum would be allotted only because of migration. There shall be no change in the spectrum allocation procedure as part of migration process.
- The technology neutral stance of the present licensing policy shall continue. Service Providers shall also be free to use any media (e.g. telephone wire, telegraph wire, TV cable, electricity wire, wireless) to provide telecom services.
- On the issue of introducing more competition, TRAI stated that it has always been in favour of open and healthy competition. It recalled that in its recommendations on the introduction of the 5th and 6th Cellular Mobile Licence, it had opined that "Induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum for the existing service providers as well as for the new players. if permitted." While TRAI stated that taking cognizance of spectrum availability, it was in favour of introducing more competition. It felt that in lieu of more cellular operators, it would be more appropriate to have competition in a Unified Licensing framework which would be initiated after six months.

- About time and need of introduction of more service providers, TRAI stated that "the induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum. As the existing players have to improve the efficiency of utilization of spectrum and if Government ensures availability of additional spectrum then in the existing Licensing Regime, they may introduce additional players through a multi-stage bidding process as was followed for 4th cellular operator."

B. Opinion of TRAI dated 4 November, 2003 on 'Issue of fresh licences for Cellular Mobile Service Providers (CMSPs)

5.7 While TRAI was formulating its recommendations of 27 October, 2003, it received a reference from DoT *vide* letter No. 842-419/2002-VAS dated 14 October, 2003 on the subject 'Issue of fresh licence for Cellular Mobile Service Providers (CMSPs).' In the letter, the Department of Telecommunications sought TRAI's opinion on:—

- "Opening up of the Cellular Service sector for further competition. Suitable guidelines may also be suggested for allotment of an optimum minimum level of spectrum before accepting the entry fee and signing of the Licence agreement.
- The treatment that should be given to the existing Basic Service Operators who are at present permitted to operate limited mobility service using WLL and whether additional spectrum should be allocated for them and if so, how much.
- Reserve price, if any, to be fixed as Entry fee, and
- Recommendations on change of existing guidelines for allocation of spectrum to existing and new operators and charges thereof so as to encourage efficient utilization of spectrum which may envisage appropriate reward for inefficient usage and penalties for efficient usage of this scarce resource."

5.8 TRAI, *vide* its letter dated 4 November, 2003 sent its response as follows:—

- (a) On the issue of opening up of the Cellular Service sector for further competition and the modalities introducing such competition, the TRAI responded that it has always been in favour of open and healthy competition. However, TRAI opined that *in lieu* of more cellular operators, it would be more appropriate to have competition in the Unified Licensing Framework. It pointed out that the detailed recommendations covering the terms and conditions as well as the migration path for existing service providers have already been provided to the Government on 27 October, 2003.
- (b) In response to the Department of Telecommunications' query of amount of reserve price, if any, to be fixed as Entry fee, TRAI mentioned that as the recommendations of October 2003 do not envisage bidding as the preferred approach, this issue was not relevant.
- (c) On the issue of change of existing guidelines for allocation and charging of spectrum to the existing and new operators, TRAI opined that a detailed spectrum policy is required on which the TRAI would provide its recommendation to the Government shortly. Till such time wireless services may be provided in the already allocated/contracted spectrum.

C. Group of Ministers on Telecom Matters, 2003 and Cabinet Decision on 31.10.2003

5.9 In the meantime, with the approval of the Prime Minister, a Group of Ministers (GoM) on Telecom Matters was constituted under the then Finance Minister's chairmanship on 10 September, 2003. The Members of the GoM were the Ministers of Defence, Law & Justice, Commerce & Industry, Communications & Information Technology & Disinvestment and External Affairs and the Minister of State (Independent Charge) of the Ministry of Information & Broadcasting.

5.10 Briefly, the GoM was required to make recommendations on eight Terms of Reference relating to adequate spectrum needed for the telecom sector, measures for realisation of NTP targets of rural telephony, resolution of issues regarding the Convergence Bill, charting the course to a Universal Licence, enforcement of limited mobility within the SDCA for WLL (M) services of basic operators, FDI limits in telecom sector, mergers and acquisitions, and imposition of trade tax on telecom services.

The GoM took note of the exercise that had already been initiated by Telecom Regulatory Authority of India (TRAI) in regard to Unified Licensing Regime in the Telecom Sector. Later, the TRAI recommendations on Unified Licensing Regime was placed before the GoM on 30 October, 2003 wherein it was approved and recommended to be placed before the Cabinet for its approval.

5.11 The Cabinet considered the recommendations of the GoM on telecom matters on 31 October, 2003 and *inter-alia* approved their recommendations as follows:—

Release of adequate spectrum needed for growth of telecom sector:

- *"Adequate spectrum be made available for the unimpeded growth of telecom services, modalities for which will be jointly worked out by Wireless Planning and Coordination (WPC), Wing of Department of Telecom and Defence Services.*
- *The Department of Telecommunications and Ministry of Finance would discuss and finalise spectrum pricing formula, which will include incentives for efficient/use of spectrum as well as disincentive for sub-optimal usage.*
- *The allotment of additional spectrum be transparent, fair and equitable, avoiding monopolistic situation regarding spectrum allotment/usage.*
- *The long term (5/10 years) spectrum requirements along with time frames would be worked out by Department of Telecom."*

To Chart the Course to a universal licence:

- *".....The scope of NTP-99 may be enhanced to provide for licensing of Unified Access Services for basic and cellular licence services and Unified Licensing comprising all telecom services. Department of Telecommunications may be authorised to issue necessary addendum to NTP-99 to this effect.*
- *The recommendations of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted. DoT may be authorised to finalise the details of implementation with the approval of the Minister of Communications and IT in this regard including the calculation of the entry fee depending on the date of payment based on the principle given by TRAI in its recommendations.*
- *The recommendations of TRAI in regard to the course of action to be adopted subsequently in regard to the implementation of the fully Unified Licence/Authorisation Regime may be approved. DoT may be authorised to finalise the details of implementation with the approval of the Minister of Communications & IT on receipt of recommendations of TRAI in this behalf.*
- *If new services are introduced as a result of technological advancement, which require additional spectrum over and above the spectrum already allotted/contracted, allocation of such spectrum will be considered on payment of additional fee or charges; these will be determined as per guidelines to be evolved in consultation with TRAI."*

5.12 Based on the above Cabinet decision, NTP-1999 was amended on 11 November, 2003 through notification of an addendum to include the following:—

- Unified Licence for Telecommunication Services permitting Licensee to provide all telecommunication/telegraph services covering various geographical areas using any technology;
- Licence for Unified Access (Basic and Cellular) Services permitting Licensee to provide Basic and/or Cellular Services using any technology in a defined service area.

5.13 “Guidelines for Unified Access (Basic & Cellular) Services Licence” (**Annexure-8**) were issued wherein Government had decided to move towards a Unified Access Licensing regime. In this regard, a press release was also issued on 11 November, 2003 (**Annexure-9**). The Guidelines, *inter-alia* stipulated that “with the issue of these Guidelines, all applications for new Access Services Licence shall be in the category of Unified Access Services Licence.”

5.14 During his oral evidence on 14 September, 2011 Shri Vinod Vaish, the then Secretary, Department of Telecommunications submitted that the concept of Unified Access Service Licensing regime was part and parcel of the TRAI recommendations. He drew attention to the summary of recommendations of TRAI dated 27 October, 2003, “In the interest of consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector, the Authority recommends that the country should migrate to Unified Licensing Regime for all telecom services. As a preparatory step, Unified Access Service Licence will be implemented for access services in each circle. Finally, within six months, Unified Licensing through an authorization process for all services, etc., etc.”

5.15 Shri Vinod Vaish stated that it was definitely an idea which evolved for the purpose of tackling the field level problems where service specific licences transgressed into the area of the other, and definitely the Cabinet had approved the UASL regime. In fact, the National Telecom Policy was amended to add Unified Access Licensing as a class of licence plus Unified Licence as well. It was mentioned that UAS Licensing was for a transition period of six months. As per Shri Vaish, whatever the Department of Telecommunications did was with the understanding that what they were doing was for a transition period of six months. After this period, TRAI recommendations on pricing and allocation of spectrum would be received, and the rest of action would take place at that point of time. So, it was only for the transition period the Department of Telecommunications wanted to see that their action should be perceived in such a way that at least the little bit of reform that was contemplated in the TRAI paper and the exercise taken by the Cabinet got implemented without the courts coming into the way and issuing a stay order because stay order could have been given by TDSAT also.

5.16 Further, the former Secretary, Department of Telecommunications also drew attention to para 7.18 of the TRAI recommendations which said that the third alternative was that the existing entry fee of the fourth cellular operator should be the entry fee in the new Unified Access Licensing regime. Hence, he pointed out that Unified Access Licensing regime forms part and parcel of the TRAI recommendations approved by the Cabinet.

D. Issue of licences under UASL Regime—Entry Fee

5.17 On 12 November, 2003 the Department of Telecommunications received some applications for grant of UASL in the form prescribed for erstwhile Basic Service Licences. At this stage, the then Secretary, Department of Telecommunications had a telephonic conversation with the then Chairman, TRAI seeking clarification regarding the entry fee to be charged for

UAS Licences, which culminated with a D.O. Letter dated 14 November, 2003 from the Chairman, TRAI (**Annexure-10**) which explained TRAI's position in this regard. The letter made it amply clear that the entry fee of the new Unified Licensee would be the entry fee of the 4th Cellular operator and in service areas where there was no 4th operator — the entry fee of the existing BSO fixed by the Government (based on TRAI's recommendations). In such States where no 4th cellular operator came in, the entry fee for BSOs fixed by the Government as per recommendations of TRAI, would be the entry fee for new or existing Unified Licensee.

5.18 Explaining the circumstances in which the Department of Telecommunications sought the opinion of the Chairman, TRAI over telephone, in the written submission it was stated that *vide* U.O. dated 5 November, 2003 PMO had sought comments with regard to the recommendations of TRAI that *"no additional fee is to be paid for any of the circles where there is no 4th Cellular Operator, as the same appeared to be a departure from the practice adopted with regard to additional entrants in other circles."* In this context a clarification was received from TRAI *vide* D.O. dated 14 November, 2003 from Chairman, TRAI to Secretary, the Department of Telecommunications referring their telecom regarding entry fee of the new Unified Licensee.

5.19 Referring to the above correspondence of TRAI, the Department of Telecommunications, *vide* letter dated 21 November, 2003 responded to PMO as detailed below:—

"This has a reference to PMO UO No. 180/31/C27/2003-ES.I dated 5 November, 2003 on the above subject. In the above matter, comments have been received by DoT from Chairman, TRAI also comments of DoT after considering the views of TRAI in the matter are as below:—

In service areas where there is no fourth operator—viz. Bihar, Orissa, W.B. & A.N. and Assam, etc.—no extra entry fee would be charged from the existing operators migrating to the Unified Access Licensing Regime. Incidentally, in such States where no 4th cellular operator came in, the entry fee for BSOs was fixed by the Government and as per TRAI recommendations, it will be the same for new or existing unified licensee. As such, for migration of existing basic service operators to Unified Access Services Licence, no additional entry fee is required to be paid in service areas where there is no fourth cellular operator. However, for new entrants in these service areas the entry fee would be same as that paid by the existing basic service operators."

5.20 In connection with the Department of Telecommunications reply dated 21 November, 2003, PMO on 03 December, 2003 telephonically sought some more clarification from the Department of Telecommunications regarding the reasons for specifying no additional fee to be paid for any of the circles where there was no 4th cellular operator. Accordingly, the Department of Telecommunications *vide* letter dated 5 December, 2003 sent its reply to PMO.

5.21 Regarding the background of the D.O. letter of Chairman, TRAI dated 14 November, 2003, TRAI had submitted that while there was no record found in the office of TRAI to indicate that the letter was processed on file, the letter was also referred to in a letter dated 19 November, 2003 from Secretary, TRAI addressed to the Sr. Deputy Director General (VAS), Department of Telecommunications (**Annexure-11**). In this letter, which was issued with the approval of the Authority, it was mentioned that the then existing spectrum allocation procedures could be applied "for the new entrants also". It also stated that "if the licensor has to issue any Unified Access Licence to new applicants, the TRAI feels that spectrum to these licensees may be given as per the existing terms and conditions relating to spectrum". Regarding entry fee to new Unified Access Licensees, it pointed out that "the matter has already been clarified *vide* Chairman

TRAI's D.O. letter dated 14 November, 2003". The letter of 14 November, 2003 was also put up on 17 November, 2003 as an Agenda item for the Meeting of the Authority on 24 November, 2003 (continued on 3 December, 2003) and was noted by the Authority. In the same meeting, it was also acted upon by the Authority in recommending an Entry fee of Rs. 1 crore for new Universal Access Service Licence (UASL) in the West Bengal circle (**Annexure-12**). Thus, the letter of 14 November, 2003 had the *ex-post facto* approval of the Authority.

5.22 Further, it has been informed that in reply to the Rajya Sabha Unstarred Question No. 4068 dated 19 August, 2011, TRAI had conveyed that in 2005 and 2007 recommendations, TRAI recommended the continuation of entry of new UAS Licences at the same level as determined in 2001 (**Annexure-13**)

5.23 Owing to the untread nature in which opinion was sought and the way in which it was given, many queries were put to Shri Vinod Vaish, former Secretary, Department of Telecommunications during his oral evidence before the JPC on 14 September, 2011. Answering one of the questions, Shri Vaish submitted that soon after the Cabinet decision of 31 October, 2003 the industry was watching very carefully as to how the Department of Telecommunications took the follow-up action. Cabinet had not asked to stop issuing Basic Service licences. So, in the first week of November, the Department of Telecommunications addressed themselves to certain pending applications of Basic Services Licences and he recalled that about four applications were allowed in the first week of November, 2003.

5.24 Shri Vinod Vaish stated that the question that arose at that time was that having got Basic Services Licence, a situation was created where the licensee would ask for migration. It was because a migration methodology had been approved by the Cabinet, and the Department of Telecommunications would necessarily have to follow the same formula and the same principles because the Department of Telecommunications could not have adopted any other with so much proximity in time to the earlier decision.

5.25 Explaining the circumstances that led to his seeking opinion over telephone and the urgency involved in the matter, Shri Vaish emphasised that a case was being heard in the Supreme Court that had been filed on 27 October, 2003. The Department of Telecommunications were in discussions with the help of the Law Ministry, and engaged late Mr. Kirit Raval, the then Solicitor General, as the Department of Telecommunications' counsel because he had handled the case in TDSAT also. He was personally looking after the case, and the Department of Telecommunications were in discussions with him almost on a daily basis. He gave the Department of Telecommunications the impression that the way they were going, stay was imminent in the case. If that had happened, the former Secretary, the Department of Telecommunications stated that, then the entire exercise of the Group of Ministers in which the Department of Telecommunications were trying to solve the problem of regulatory uncertainty, and where the fixed line operator was transgressing into the area of the mobile operator, and there was one operator who was doing it in a blatant manner, and the Cabinet decision that approved a notice being issued to the said operator to stop all that within one month, all would have been rendered futile. The implementation of the TDSAT order of August, 2003 also would have become a major issue, and cellular industry definitely had a lot of grievances against the non-implementation of the licence conditions in the particular case.

5.26 Shri Vinod Vaish further stated that the Department of Telecommunications were preparing the guidelines for Unified Access Licences. Basically, it was meant for such of those who were migrating. But on the basis of the legal advice given at that time, namely, that the Government should give a signal in line with the TRAI recommendations and the approval of the Cabinet that in future the Government would give only Unified Access Licences for access purpose and

the Department of Telecommunications would not now give fixed service licence and cellular mobile licences because if these service-specific licences were given, then they might again result in one category of licences transgressing into the area of the other, so, the Department of Telecommunications introduced into the guidelines that all fresh applications for access licences would be in the Unified Access category. According to Shri Vaish, having introduced it into the guidelines, reading the TRAI recommendations and paragraph 7.39, there was a real difficulty because paragraph 7.39 of TRAI recommendations was meant for new cellular operators in the existing regime or pre-UASL regime. The Department of Telecommunications was not sure, what was then to be done for new UASL operators in terms of the TRAI recommendations and the Cabinet decision.

5.27 Shri Vinod Vaish stated that in this backdrop it was felt that there was need for some clarification with the Chairman, TRAI because in some of the previous paragraphs TRAI had given the approach and the principles on how they had calculated the entry fee for entering into a Unified Access Licence regime. So, the Department of Telecommunications interacted with TRAI to know — in terms of the TRAI recommendations and the Cabinet decision — whether the Department of Telecommunications could find some principles, which could help them in going forward? The former Secretary, Department of Telecommunications felt that TRAI could easily have said that: “No, this does not give us the way out”. But that was not so, and they quoted the TRAI recommendations itself to say that: “Yes, we have this answer in these recommendations and you could consider going by this”.

5.28 However, when it was pointed out to Shri Vaish that the C&AG in its report had said that the clarifications sought from the TRAI was given by the Chairperson, TRAI in his individual capacity, he submitted that he did not agree at all with the view of the C&AG because the Department of Telecommunications got a letter from the Chairman, TRAI on 14 November, under his official letterhead and the Department of Telecommunications could not jump to the conclusion that this was written in his private capacity. He supplemented that the C&AG had erred in reading the said letter in isolation and not reading the letters of 19 November followed by the letter of 4 December, 2003 also written by the TRAI which substantiate and quote the letter of 14 November, 2003. He also clarified that the letter of the Chairperson, TRAI did not say anything outside the TRAI recommendation of the 27 October, 2003 on UASL Regime and did not give any impression that this was a new recommendation. It merely gave the clarification that what the Department of Telecommunications sought was already contained in the TRAI recommendations.

5.29 On the question of induction of new players, the former Secretary, categorically stated that paragraph 7.39 of the recommendations of TRAI dated 27 October, 2003 talks about the procedure of multi-stage bidding in the “existing licensing regime” *i.e.* in the pre-UASL regime. It nowhere says that UASL operators have to go through a process of multi-stage bidding. He further elaborated that with the pronouncement of Guidelines dated 11 November, 2003 which introduced UASL regime, paragraph 7.39 of TRAI recommendation dated 27 October, 2003 became irrelevant.

E. Procedure adopted for issue of Licences under UASL-FCFS and Spectrum related Issues.

5.30 On 17 November, 2003, the Chairman, Telecom Commission (Secretary, Department of Telecommunications) approved the decision to accept the applications made for grant of UASLs on 12 November, 2003 and adopted procedure for the application similar to the one adopted

for Basic Service Licence. On 17 November, 2003, the Department of Telecommunications also requested TRAI to make available its recommendation on spectrum related issues urgently so as to facilitate grant of UAS Licences. In response, *vide* letter dated 19 November, 2003 TRAI stated as below:—

"In para 7.31 of TRAI recommendations, it was mentioned that while operators may be issued unified access licence they should continue to provide wireless services in the already allocated/contracted spectrum and no additional spectrum would be allocated only because of migration. It has been further recommended that there shall be no change in the spectrum allocation procedure as part of migration process. Thus the principle is that the prevailing spectrum allocation procedure should continue till fresh Guidelines on this matter are issued by the DoT. This principle can be applied in the interim period for the new entrants also.

Thus, in the interim period before the TRAI recommendations on efficient utilisation of spectrum etc. become available, if the licensor has to issue any unified access licence to new applicants, the TRAI feels that the spectrum to these licensees may be given as per the existing terms and conditions relating to spectrum in the respective licence agreement. This implies that even though unified access licence is service and technology neutral, spectrum under the new unified licence for offering mobile services may be allocated in the interim period on the technology used for offering these services. For example, if a new Unified Access provider is offering wireless mobile service using GSM technology then the allocation/contracted spectrum in existing cellular mobile licence may be provided and for those using CDMA technology, spectrum allocation as per the provisions of basic service operators licence can be considered.

Regarding entry fee to new Unified Access Licensees, the matter has already been clarified vide Chairman, TRAI's D.O. letter dated 14 November, 2003."

5.31 Regarding the procedure for issue of licences under the UASL Regime, the Department of Telecommunications have taken the stance that since inception of mobile services, 2G spectrum is being allotted on First-Come-First-Served (FCFS) basis. However, Guidelines in this regard were issued for the first time on 25 January, 2001 and the same procedure of allocation of 2G spectrum on FCFS basis is continuing in UASL regime also. In the Basic Service Licences Guidelines, there was a reference to FCFS, but that related to allocation of spectrum. However, the Delhi High Court had in 1993 already held quoting a US Supreme Court decision that FCFS policy was arbitrary, unreliable and biased. The Guidelines for UAS Licences had made it open for new licences to be issued on continuous basis at any time and spectrum was to be allotted subject to availability. But, nowhere in the UASL Guidelines, the term FCFS had found a mention. As far as grant of UAS licences on FCFS basis is concerned, the decision was taken on 24 November, 2003 by the then Minister of Communications and Information Technology (**Annexure-14**). While processing issue of LOIs to M/s. Tata Services and M/s. Bharti Cellular Ltd., Director (VAS-II) in a note dated 21 November, 2003 recorded: "As regards the point raised about grant of new (UAS) licences on First-Come-First Served Basis, the announced guidelines have made it open for new licences to be issued on continuous basis at any time. However, the spectrum is to be allotted subject to availability. This in effect would imply that an applicant who comes first will be granted spectrum first so it will result in grant of licence on first come first served basis". The proposal was concurred by the Secretary, Department of Telecommunications on 24 November, 2003 and approved by the Minister on the same day. The Committee have been informed by the Department of Telecommunications that the UASL Guidelines were issued on 11 November, 2003 and the FCFS policy was not notified at all.

5.32 On being queried about adoption of FCFS as the norm for granting UAS Licences, Shri Vinod Vaish contended that the terminology first come first serve tends to create an impression in the mind of a layman as if it was some new law propounded by the Government or the Department of Telecommunications at that time. According to him this was the normal, most natural, most just principle that could be applied when something was to be given to a set of people who were in a queue. In the International Telecommunication Union terminology also, there was this use of language as well as of beauty parade. But he felt that the concept of 'beauty parade' and auction were not followed as those methods were not recommended by TRAI.

5.33 Regarding the use of 'beauty parade' during the liberalisation of the telecom sector, the former Secretary, Department of Telecommunications said that 'beauty parade' had been followed in the past. But he did not want to go into the merits and demerits of that. But the fact was that there was always a point of criticism, in 'beauty parade', as there was an element of subjectivity that came in and there could be lot of criticism on the approach followed. Auction could be followed, but, if this route was not being followed, then, first come, first serve was the most just and fair principle that could be applied to a situation of this kind.

5.34 On 24 November, 2003, the then Minister of Communications and Information Technology approved the issue of LOIs for grant of new UAS licences. Taking into account the letter dated 14 November, 2003 from TRAI, the Entry Fee (except for West Bengal), Performance Bank Guarantee, Financial Bank Guarantee, etc. for implementation of UAS Licensing Regime were also decided. The entry fee for grant of new UAS licences was fixed equal to the entry fee for the 4th Cellular Mobile Telephone Services (CMTS) licence(s) awarded in 2001 in service areas where there was no 4th operator, the entry fee for existing Basic Service Operator (BSO) fixed by the Government in 2001 based on TRAI's recommendation. In such States where no 4th Cellular Operator came in, the entry fee for BSOs fixed by the Government as per recommendations of TRAI would be the entry fee for new or existing Unified Licensee. Notings in the file by Assistant Director (VAS-I) shows that the recommendations received from TRAI dated 4 November, 2003 were processed in the file only on 3 December, 2003, which were then approved by the Minister on 22 December, 2003

5.35 During the oral evidence, it was pointed out to Shri Vinod Vaish that though the Department of Telecommunications decided on 24 November, 2003 to process UASL applications on FCFS basis, there were no clear and published guidelines on the modalities of the process. The former Secretary agreed that the guidelines and procedures were not spelt out but there was an understanding among the Cellular and Fixed Service operators who were consistently in touch with the Department of Telecommunications through their representatives. He said that they were also participating in various discussions with the Department of Telecommunications. At this juncture, when it was asked whether this situation would not have kept potential new entrants in the dark about the defaults of the FCFS method and tilted the balance in favour of the existing operators, Shri Vaish was of the opinion that this was only a theoretical possibility as there were no new applicants in the year 2004.

5.36 Department of Telecommunications issued 28 UAS Licences till September, 2004 since the introduction of the new licensing regime in November, 2003. After enhancement of FDI in telecom sector from 49% to 74%, the Department of Telecommunications on 14 December, 2005, issued broad guidelines for Unified Access Services (UAS) licences. 22 new UASLs were issued in the year 2006 and one new UASL was issued in the year 2007. Prior to January, 2008, UAS licences were being issued on First-come-First-Served basis mainly as per the date of application

for grant of UAS Licence in that particular service area. However, in one case in 2004, on two applications of different dates in Uttar Pradesh (West) service area, LOIs were issued simultaneously but the UAS licence was granted first to the later applicant as detailed below:—

Name of company	Date of application	Date of LOI	Date of compliance of LOI	Date of Signing of Licence	Effective date of licence
Vodafone Essar South Ltd.	28-Nov-03	17-Feb-03	12-Feb-04	13-Feb-04	13-Feb-04
Tata Teleservices Ltd.	29-Nov-03	17-Dec-03	30-Jan-04	30-Jan-04	30-Jan-04

F. Communication Convergence Bill, 2001

5.37 The Government introduced “The Communication Convergence Bill, 2001” in the Lok Sabha on 31 August, 2001. The salient features of the Bill were the following:—

- Establishment of single regulatory authority and Appellate Tribunal to deal with Telecom, IT and Broadcasting Sector.
- Transfer of licensing and registration powers from Government to regulator.
- Reduction in the number of licences to only five categories.
- Entrusting spectrum management to a “Spectrum Management Committee”.
- Regulatory authority to assign spectrum to non-strategic and commercial users.
- Strengthening of regulatory body and Appellate Tribunal by giving additional functions like powers to directly enforce compliance of their decisions/orders.
- Empowering regulatory body with dispute resolution powers.
- Giving a legislative basis to “Right to Way.”
- Promoting and enforcing Universal Service Obligation Fund.
- Repeal of four acts in telecom sector and one in the Broadcasting Sector.

5.38 On the same day, the Bill was referred to Parliamentary Standing Committee on Information Technology, who gave their recommendations on 20 November, 2002. It has been submitted to the Committee in written reply by the Department of Telecommunications that in order to examine the recommendations of the Standing Committee and to prepare comments to decide on the acceptance or otherwise of the same, an Inter-Ministerial Group (IMG) was set up under the Chairmanship of the then Secretary, the Department of Telecommunications with the approval of the then Minister of Communications and Information Technology. While the first meeting of the IMG took place on 29 April, 2003, no meeting took place thereafter.

5.39 In September, 2003 the Ministry of Information & Broadcasting took a stand that it would be more appropriate for the present to have ‘Content’ handled by an entirely different regulatory authority. In the light of comments of Ministry of Information and Broadcasting, the matter was referred to the GoM constituted on 10 September, 2003, which recommended that the matter be placed before the Cabinet. The Cabinet on 31 October, 2003 directed that the matter may be re-examined in consultation with Ministries concerned and brought up thereafter.

5.40 Subsequently, the Department of Telecommunications sought the comments of the Ministry of Information & Broadcasting in the matter. The Ministry of Information and Broadcasting on 27 October, 2004 furnished their comments on provisions of the Bill. Meanwhile, the Bill got lapsed on dissolution of Lok Sabha in 2004. The comments of the Ministry of Information and Broadcasting were also forwarded by PMO seeking views of the Department of Telecommunications. The issue was discussed by the Secretary, Department of Telecommunications with the Secretary, Information and Broadcasting on 10 January, 2005. The observations of the Department of Telecommunications were forwarded to PMO on 11 February, 2005. In the meantime, TRAI submitted its recommendations on Unified Licensing on 13 January, 2005. On 15 February, 2005, the Ministry of Information and Broadcasting were requested to give their comments on the recommendations of TRAI on the issues related to them. On 25 February, 2005, the Secretary, Department of Telecommunications held a meeting with Operators where the general consensus was against the recommendations and felt that the desired objectives could be achieved without making fundamental changes.

5.41 The Minister of Information & Broadcasting *vide* his letter dated 28 April, 2005 addressed to the Minister of Communications and Information and Technology raised certain issues in respect of the Communication Convergence Bill. Thereafter a meeting was taken by Principal Secretary to Prime Minister on the Convergence Bill with Secretaries of the Department of Telecommunications, Information Technology and Information and Broadcasting on 20 December, 2005. As per the summary record of discussion issued on 22 December, 2005 by PMO, the Secretary, Ministry of Information and Broadcasting apprised that the Ministry was of the view that the content domain needs to be delinked from the purview of the Regulator assigned with responsibilities for the regulation and management of carriage under the Communication Convergence Bill. Further, the Ministry was in the process of drafting 'Broadcasting Content Regulatory Authority Bill', which would have subsumed all the content regulation provision contained in the existing uplinking Guidelines, Cable Act, DTH Guidelines and private PM Guidelines, etc. The Secretary, Department of Telecommunications conveyed that the Department was also looking at various issues relating to the need for transferring of licensing and registration powers from the Government to the regulator. There was unanimity among the Ministry and the Departments concerned that carriage and content are distinct in nature and the regulatory arrangements for these may be delinked. The Department of Telecommunications was to accordingly re-examine the Bill from this point of view, while also reviewing it from the point of view of the issues identified by the Department of Telecommunications.

5.42 Referring to the contents of the above summary record of discussion that the Department of Telecommunications was also looking at various issues relating to the need for transferring of licensing and registration powers from the Government to the regulator, the Secretary, Department of Telecommunications *vide* DO letter dated 27 December, 2005 to PMO clarified that while agreeing with the view of Ministry of Information and Broadcasting for a separate broadcasting regulator, the Secretary, Department of Telecommunications indicated that the Department did not see much value in retaining the other provisions of the Bill since it would essentially amount to transferring of the activities of the Department from the Government to the Regulator, which the Department would not like to do and accordingly, the Secretary, Department of Telecommunications therein requested for necessary modifications in the summary record of discussions. In response, PMO, *vide* ID dated 6 January, 2006 stated that the concern raised in the aforesaid letter had been noted and it had been observed that it was adequately reflected in the summary record of discussions.

G. Non-Implementation of TRAI's Recommendations dated 13 January, 2005 on Unified Licensing

5.43 Consequent upon the addendum to NTP-1999 providing for Unified Licensing Regime, TRAI initiated the process of framing recommendations on Unified Licensing. It issued a preliminary consultation paper on Unified Licensing Regime on 15 November, 2003 and a detailed Consultation

Paper on 13 March, 2004. TRAI sent its recommendations on 'Unified Licensing Regime' to the Department of Telecommunications on 13 January, 2005. The salient features of the recommendations are contained in **(Annexure-15)**.

5.44 The key objective of the Unified Licensing Regime was to encourage free growth of new applications and services, leveraging on the technological developments in the Information and Communication Technology (ICT) area. Other main objectives of the Unified Licensing Regime were to simplify the procedure of licensing in the telecom sector, ensure flexibility and efficient utilisation of resources keeping in mind the technological developments, encourage efficient small operators to cover niche area particularly in rural and remote areas and to ensure easy entry, level playing field and 'no-worse off' situation for existing operators.

5.45 The recommendations dated 13 January, 2005 of TRAI on Unified Licensing Regime were deliberated in the Department of Telecommunications. In the absence of the comments from the Ministry of Information and Broadcasting, the Department of Telecommunications was not appropriately positioned to decide/accept the TRAI's recommendations on Unified Licensing. In the above background, the view taken by the Department of Telecommunications at that point of time was that as the Communication Convergence Bill, 2001 got lapsed on dissolution of the Lok Sabha in 2004, the implementation of Unified Licensing Regime, would have appeared that what could not be done directly is being admitted indirectly through this recommendation. Further, the policy of Communications Convergence was not being pursued by the Government any more. At that time, it was also felt that two different authorities were not hurting the growth process and issues could be examined without broadcast services being part of Unified Licensing. Further, in view of the reference dated 13 April, 2007 of the Department of Telecommunications to TRAI for getting recommendation on the number of Access Services licensees in each service area and certain other issues, it was also felt that at an appropriate time, the Department of Telecommunications may also seek TRAI's recommendation for Unified Licensing of all Telecom services. In view of the above, on 10 July, 2007, the Department of Telecommunications decided not to accept the recommendations of TRAI on 'Unified Licensing Regime'. (Incidentally, TRAI in its recommendation of 11 May, 2010 has recommended for Unified Licence which excludes broadcasting licences).

H. Reduction in Licence fee as Revenue Share

5.46 The Committee note that licence fee was reduced w.e.f. 1 April, 2004 by additional 2% of AGR in each of the categories making it 10, 8 and 6% of AGR for Metro/A, B, C category service areas respectively. In addition, first two cellular licensees in telecom circles were given additional incentive and licence fee was reduced by another 2% w.e.f. 1 April, 2004 for next four years subject to the stipulation that no operators shall pay less than 5% of AGR, the requirement for USO. The financial implication of the proposal was estimated at Rs. 968 crore for the first four years and Rs. 885 crore per annum thereafter. The proposal to the above effect, initiated by the then Minister of Communications and Information Technology was approved on file by the then Minister of Finance on 19 December, 2003 **(Annexure-16)**. The Department of Telecommunications have submitted in this regard that as per records available with them, recommendations of TRAI were not sought before effecting the cut in licence fee.

5.47 During his oral evidence on 14 September, 2011, Shri Vinod Vaish was asked about the appropriateness of the decision to reduce the AGR, despite the service providers being offered concessions during the migration package of 1999. In his reply the former Secretary, Department of Telecommunications submitted that the cellular industry at that time was in its very nascent stage. And during the deliberations of the Group of Ministers, it did come out that the first two set of cellular operators who may have been given concessions in the past, the entry fee, at the time migration which became payable against them, was much in excess of what was paid by the fourth cellular operator.

5.48 When it was pointed out that his statement was factually incorrect, the former Secretary, Department of Telecommunications replied that the Cabinet decision did authorise the Finance Minister to take this kind of action because it was rather carefully worded. The Cabinet note said that while there appeared to be no case for giving any compensation package to Cellular Licences, because of the perception that the finances of the cellular operators are strained and because of the effect that these may have on the financial institutions, the Finance Ministry would address the difficulties of the cellular operators, if any, separately and appropriately. It was in pursuance to this that the Finance Minister with the help of his officers initiated an exercise and the Department of Telecommunications assisted them by requesting the industry to get some expert study reports. He recalled that the Department of Telecommunications passed on the study reports to the Ministry of Finance. These reports indicated negative net worth of the companies which were coming in the first two cellular operators' category. Another aspect that emerged in the Group of Ministers discussion was that the entire telecom industry, compared to the international situation, was very heavily taxed. The licence fee was roughly around 12 per cent, spectrum fee around 4 per cent, service tax 10 per cent and apart from that the burden of customs duty and things like that turned out to make it very heavily taxed.

5.49 As per Shri Vinod Vaish, the Department of Telecommunications had on record letters from TRAI telling them that the Government should charge only a token licence fee based on administrative expenses and other things, and not treat the telecom sector as a source of revenue. He recollected that TRAI had written letters in this regard which indicated that the telecom sector was having a very high licence fee and that needed a reduction.

5.50 In the light of the decision taken by the Department of Telecommunications the Committee desired to know whether the Government of the day believed that private interest was synonymous with Government revenue forgone, may be for larger public interest, to further the cause of tele-density. Shri Vinod Vaish further stated that the Government of the day definitely felt that the NTP-1999 had come out with the observation that private sector had not been able to establish a foothold in the growth of the telecom industry and Government had to assist it, and the future of telecom in the country would be benefited by enabling the private sector to grow and enhance competition. Therefore, Government had to play a facilitating role to enable the private sector to play that kind of a function. He said that due to whatever the Government did, the nascent industry was nurtured and brought up to the stage where we are today. Otherwise, if wrong decisions had been taken at that time, may be the industry would have been killed.

I. Issue of UAS Licences to M/s Dishnet DSL Limited

5.51 M/s Dishnet DSL Limited applied for UAS Licences for 8 Service Areas in Assam, Bihar, Madhya Pradesh, Jammu & Kashmir, North-East, Orissa, Himachal Pradesh and West Bengal including Andaman & Nicobar on 5 March, 2004. LOI was issued for all the 8 Service Areas on 6 April, 2004. On 20 April, 2004, M/s Dishnet DSL Limited applied for time for signing the agreements for 7 Service Areas excluding Madhya Pradesh. Another request was received for extension of time by 90 days for signing agreement on Madhya Pradesh Service Area. The agreement was signed for 7 Service Areas on 12 May, 2004. The M/s Dishnet DSL Limited also applied for UAS Licence in Uttar Pradesh (East) and Uttar Pradesh (West) areas on 21 April, 2004.

5.52 From the records made available to the Committee, it is seen that during the process for approval of extension of time by 90 days for Madhya Pradesh and issue of LOI for Uttar Pradesh (East) and Uttar Pradesh (West), points were raised by Licensing Finance Section of the Department of Telecommunications on the company's paid-up equity capital, net worth, debt equity ratio and to explain their plans to augment funds for such a huge project amounting to

Rs. 2110 crores. The Company was addressed on the above subject and the reply was received with the reasons as to how the networth was increased to Rs. 364.79 crores and their intentions to raise funds from banks and other financial institutions and to maintain their debt equity ratio at 1:1. According to the Department of Telecommunications, this reply was taken as an internal matter of the company to meet the requirement of funds. Meanwhile, an application for change of name from M/s Dishnet DSL Limited to M/s Dishnet Wireless Limited was received by the Department of Telecommunications on 21 July, 2004.

5.53 On 08 July, 2004, a self-contained note was submitted to the Minister of Communications and Information Technology seeking approval for issuance of LOI to M/s Dishnet DSL Limited in respect of Uttar Pradesh (East) and Uttar Pradesh (West) Service Areas. Also, approval was sought for grant of extension of time by 90 days for signing the licence agreement for Madhya Pradesh Service Area. On 26 August, 2004, Private Secretary to the Minister of Communications and Information Technology sought clarifications from the Department on the following issues:—

- (a) The financial/equity between M/s Dishnet DSL Ltd. and its sister concerns holding licence elsewhere, particularly in Tamil Nadu and Chennai.
- (b) To verify the status of the newspaper reports regarding sale of M/s Dishnet DSL Ltd. or any of its sister concerns to any other company.
- (c) To also verify whether M/s Dishnet DSL Ltd. or any of its sister concerns granted licences in other service areas were later sold to another licensee/entity.
- (d) It is recalled that the company has violated certain licence conditions entailing specific penalty being imposed on it. The legal implications to this case may please be examined and reported.

5.54 On 26 August, 2004, a note was submitted by the Department of Telecommunications regarding proposed change of equity structure of M/s Aircel Limited for approval of the Minister of Communications and Information Technology. The Committee find from records that on 15 September, 2004, Private Secretary to the Minister of Communications and Information Technology in his note stated that there were many inter-related issues between merger & acquisitions, licencing, FDI and FII investment in holding companies and their sister concerns. It was mentioned that an overall view on issues arising in such cases needed to be taken before a decision could be taken. Additional Secretary (T) was instructed to prepare a note on the aforesaid issues and submit them through Secretary, Department of Telecommunications.

5.55 On 30 November, 2004, Additional Secretary (T) in his note submitted to the Secretary, Department of Telecommunications, *inter-alia*, stated that before granting UAS licences to Dishnet, the Department may await the decision of TDSAT on the issue of vigilance cases and penalties imposed by Department of Telecommunications on the company. Regarding the change in equity structure of M/s Aircel Limited, Additional Secretary (T) stated in the same note that "The equity structure of the new management is so complex that it is difficult to believe that management control will remain with Indian shareholders. Perhaps, Aircel Digilink India Limited may have to simplify its equity structure so that direct and indirect FDI do not cross the prescribed limit. Till this is done, the request of the company may be kept in abeyance". On 3 December, 2004, Secretary, Department of Telecommunications directed that legal opinion on the comment of Additional Secretary (T) be obtained. On 13 December, 2004, the Department of Telecommunications sought opinion of the legal advisor on the aforesaid comment of Additional Secretary (T). While giving his opinion dated 11 January, 2005, the legal advisor *inter-alia* stated: "With regard to complicated nature of equity holding, no objection can be taken by licensor because such adverse notice is not provided in the Licence Agreement. Hence, there is no

locus standi *i.e.*, legal standing to object either to indirect foreign equity of any percentage or to complicated nature of equity holding of licensee. Moreover after 5 years from the effective date of License Agreement there is no restriction against transfer/sale of equity except that competition cannot be compromised.

5.56 From the records made available, the Committee note that the files relating to M/s Dishnet DSL Limited on the issue of grant of licences and taking on record the change of name from M/s Dishnet DSL Limited to M/s Dishnet Wireless Limited was submitted to the Minister of Communications and Information Technology on 24 December, 2004. These files were returned on 3 March, 2005 by the Private Secretary to the Minister to the then Secretary, Department of Telecommunications with the directions that the Secretary might re-examine if there had been undue haste in processing the case file of M/s Dishnet DSL Limited in respect of 8 LOIs issued during the period of his predecessor. On this, the then Secretary, Department of Telecommunications after discussing the matter with the Minister of Communications and Information Technology, in his note dated 30 March, 2005 recorded that the show cause notices should be linked with issuance of licences. On 19 January, 2006, a note was put up by DDG(BS) to the Minister of Communications and Information Technology seeking approval that the processing of applications of M/s Dishnet DSL Limited for grant of new licences should be de-linked from show cause notices or explanations called for or any other advisory issued to that company or any other sister/group company in respect of any other licence. The Minister of Communications and Information Technology approved the proposal on 16 May, 2006.

J. Role of Ministry of Finance stipulated by the Cabinet in relation to implementation of the UASL — 2003 regime

5.57 Regarding the pricing of telecom spectrum, the Union Cabinet decided on 31 October, 2003 *inter-alia* that: "The Department of Telecom and Ministry of Finance would discuss and finalise spectrum pricing formula, which will include incentive for efficient use of spectrum as well as disincentive for sub-optimal usages".

5.58 In pursuance of the above decision, the Department of Telecommunications *vide* its letter dated 17 November, 2003 sought TRAI's recommendations on efficient utilization of spectrum; spectrum pricing and spectrum allocation procedure. Subsequently, TRAI submitted its recommendations dated 13 May, 2005 on "Spectrum Related Issues". Salient features of TRAI Recommendations were:

Various pricing options to determine one time spectrum charge for new operator.

- Auctions
- Administrative Incentive Pricing (AIP)
- Cost Recovery where there is no completion
- Market based benchmarks.

"Therefore, till Unified Licensing regime comes into effect and also till two years of implementation of Unified Licensing regime, the entry fee which includes one-time spectrum charge for new entrants shall be the same as the entry fee under Unified Access Licensing Regime for each service area."

5.59 Further it also stated "After implementation of Unified Licence Regime as recommended by TRAI and subject to approval by Government of India, authority recommends that the onetime spectrum charges would be equal to UASL entry fee in that service area minus the component of registration charge based on the entry fee paid by BSO (entered in/after 2001), specified by TRAI in its recommendations on Unified licensing regime dated 13 January, 2005".

5.60 TRAI recommendations were processed in the Department of Telecommunications and a reference was made to Ministry of Finance on 6 June, 2005. In response to this communication Ministry of Finance *vide* their letter dated 21 December, 2005 (**Annexure-17**), stated "In so far as spectrum allocation fees are concerned, the options of Auction/Price Discovery and Base Fee, Revenue Share and a hybrid of base fee and revenue share were examined. Auction/Price Discovery and Base Fee methods are not appropriate, the first due to its monopolistic and cost implications and the latter as it implies an administratively determined fee without the basis of price discovery. While revenue share would be the most logical and transparent and also acceptable to the industry, fee allocation of spectrum is in the nature of a subsidy, especially as the resource in question is scarce and in great demand. The hybrid option of a base fee combined with revenue share, therefore, appears to be the most appropriate".

It was also recommended by Department of Economic Affairs that the issues should be put up for consideration and appropriate decision by the Committee of Secretaries and thereafter, by the Group of Ministers. The Committee have been informed that the issue relating to reference to a GoM/CoS was not followed up further by either the Department of Telecommunications or Department of Economic Affairs.

CHAPTER VI

UNIFIED ACCESS SERVICE LICENCES IN 2008

6.1 In terms of Unified Access Service Licence (UASL) Guidelines dated 14 December, 2005, UAS Licences were to be issued without any restriction on the number of entrants for provision of Unified Access Services in a Service Area on First-Come-First-Served (FCFS) basis. The applicants were submitting applications as per existing Guidelines. 51 new UAS Licences (including 28 licences granted in 2004) were issued till March, 2007 on FCFS basis. Upto March, 2007, 159 Licences had been issued for providing Access Services (CMTS/UASL/Basic) in the country and there were 5 to 8 Access Service Providers in each Service Area. The Access Service Providers are mostly providing services using the wireless technology (CDMA/GSM). As per the extant policy, any Indian company fulfilling the eligibility criteria could apply for UAS Licence.

A. Department of Telecommunications reference to TRAI dated 13 April, 2007

6.2 According to the Department of Telecommunications, continuous issue of licences, as per the policy, was increasing the demand on spectrum in a substantial manner. At that point of time, the Government was contemplating to review its policy. Accordingly, the Department of Telecommunications *vide* their letter dated 13 April, 2007 (**Annexure-18**), requested TRAI to furnish their recommendations on the issue of limiting the number of Access Service Providers in each Service Area and review of the terms and conditions in the Access Provider licences including usages of Dual Technology spectrum, review of Merger Guidelines, etc. There were 53 UASL applications pending at the time of this reference made to TRAI. Prior to the reference made to TRAI, applications were being processed on continuous basis. On 11 May, 2007, Director (AS-1) in the Department of Telecommunications submitted a note proposing *inter-alia* that “further processing/examination of pending UASL applications may be undertaken only after receipt of recommendations of TRAI and the decisions thereof. Any fresh application received in future for a new UAS licence may be considered only after a suitable decision is taken in the matter”. The proposal was concurred in by DDG (AS), Member (T) and Secretary, Department of Telecommunications. The aforesaid proposal of the Department was approved by the Minister of Communications & Information Technology on 17 July, 2007.

6.3 On 28 August, 2007, TRAI gave its recommendations (**Annexure-19**) on review of licence terms and conditions and capping of number of Access Service Providers. Salient recommendations of TRAI were as follows:—

- (i) No cap be placed on the number of Access Service Providers in any Service Area.
- (ii) The Department of Telecommunications should examine the issue early and specify appropriate licence fee for UAS Licensees who do not wish to utilise the spectrum.
- (iii) In future, all spectrum, excluding the spectrum in 800, 900 and 1800 bands should be auctioned so as to ensure efficient utilisation of this scarce resource.
- (iv) A licensee using one technology may be permitted on request, usage of alternate technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternate technology or which would be paid by a new licensee going to use that technology.
- (v) Revised spectrum allocation criteria.

6.4 The recommendations of TRAI were received by the Department of Telecommunications on 29 August, 2007. An internal Committee of the Department of Telecommunications under the Chairmanship of Member (T) was constituted on 21 September, 2007 to examine the recommendations of TRAI.

B. Cut-off Date for Applications for Unified Access Service Licence

6.5 Pending consideration of the said recommendations of TRAI, till 24 September, 2007, 167 applications from 12 companies for 22 Service Areas had been received by the Department of Telecommunications. At that stage, the Department of Telecommunications felt that it might be difficult to handle such large number of applications at any point of time. Accordingly, on 24 September, 2007 DDG(AS) in the Department of Telecommunications initiated a note proposing *inter-alia* "It is proposed that we may announce a cut-off for receipt of UASL applications such that no new applications will be received after cut-off date till further orders. We may give a reasonable time to all who wish to submit new UASL applications so that the decision may not be challenged. The reasonable period may be, say, 15 days. Therefore, we may announce 10 October, 2007 to be cut-off date for receipt of new UASL applications till further orders." The proposal had the concurrence of Member (T) and Secretary, Department of Telecommunications. Based on this note, the Minister of Communications and Information Technology decided that "In view of large number of applications pending and to discourage speculative players, we may close receiving applications on 1 October, 2007 i.e. one month from the date of TRAI's recommendations". On the same day i.e. on 24 September, 2007, a press release was also issued notifying the cut-off date which read as "It has been decided that new applications for Unified (Telecom) Access Services (UAS) Licences will not be accepted by Department of Telecommunications (DoT) after 1 October, 2007 till further orders".

C. Approval of Recommendations of TRAI dated 28 August, 2007

6.6 The internal Committee set up in the Department of Telecommunication under the Chairmanship of Member (T) to examine the recommendations of TRAI dated 28 August, 2007 submitted its report. While reviewing the recommendation of TRAI on 'no cap', the internal Committee noted that the Department of Telecommunications had made a reference to TRAI to examine the issue of limiting the number of Access Service Providers basically due to the shortage of spectrum. It was observed that TRAI had not given any solution to the paucity of spectrum while recommending no capping on number of Access Service Licences. The internal Committee emphasized that the issue of spectrum availability could not be ignored while granting new licences. Given the central aim of NTP-1999 to ensure rapid expansion of tele-density, the internal Committee opined that the recommendation of TRAI that no cap be placed on the number of Access Service Providers in any Service Area might be accepted. On 10 October, 2007, in its meeting, Telecom Commission accepted the recommendations of TRAI for no cap on number of licences in a Service Area. The TRAI recommendations (**Annexure-20**), as approved by the Telecom Commission on 10 October, 2007 was submitted for the approval of the Minister of Communications and Information Technology on 11 October, 2007. While considering TRAI's recommendations as approved by the Telecom Commission, the Minister of Communications and Information Technology approved the same on 17 October, 2007 subject to following changes made by him as shown below:—

"Para 6.4—TRAI recommendation is accepted. TEC should submit its report on efficient utilisation of spectrum by 31 October, 2007. Till then, all those existing operators who become eligible as per TRAI spectrum criteria, may be released additional spectrum subject to maximum of 10 MHz per Circle.

Para 6.16—It will be considered along with TEC Report.

Para 6.20—We may consider it as and when such new technology becomes available.

Para 6.24—Separate streams may be maintained for different technologies for calculation of licence fee and spectrum charges.”

In the same note, the Minister of Communications and Information Technology recorded:

“...Pending requests of existing UASL operators for use of dual/alternate wireless access technology should be considered and they should be asked to pay the required fees. Allocation of spectrum in alternate technology should be considered from the date of such requests to WPC subject to payment of required fees.”

6.7 On 19 October, 2007, the Department of Telecommunications issued a press release (**Annexure-21**) notifying *inter-alia*:

- (i) The recommendations of TRAI, that there should be no cap on the number of Access Service Providers in any Service Area, has been considered and accepted by the Government;
- (ii) The allocation of spectrum and grant of wireless licence shall be subject to availability. In case UAS Licensee is not allocated spectrum due to non-availability, the licensee shall endeavour to roll out services using wireless technology;
- (iii) Government has accepted TRAI's recommendations and enhanced subscriber linked criterion for allocation of spectrum to UAS/CMTS licensees and has set up a Committee in Telecom Engineering Centre (TEC) to further study and give a report to the Government.
- (iv) Existing private UAS licensees may be permitted to expand their existing networks by using alternate wireless technology, *i.e.* the present UAS licensee, who is using GSM technology for wireless Access, may be permitted to use CDMA technology and vice versa. Allocation of spectrum for alternate technology, CDMA or GSM, shall be subject to availability and on payment of prescribed entry fee. Existing UAS licensees, who have already applied for allocation of spectrum for the alternate technology, shall also be considered for allocation of spectrum in alternate technology from the date of payment of prescribed fee;
- (v) BSNL and MTNL being incumbent operators shall be permitted to usage of alternate technology and allocated spectrum for alternate technology without paying prescribed fee;
- (vi) Spectrum enhancement charges in addition to annual spectrum charges based on revenue share may be levied at the time of additional spectrum allotment to licensees beyond 10 MHz for GSM and 5 MHz for CDMA.

Press note dated 19 October, 2007 while providing for use of alternate wireless technology by operators and their entitlement for allotment of spectrum provided that existing UAS licensees, who have already applied for allocation of spectrum for alternate technology, shall also be considered for allocation of spectrum in alternate technology from the date of payment of prescribed fee.

6.8 An issue which engaged the attention of the Committee relate to the validity of the approval accorded to the recommendations of TRAI dated 28 August, 2007 which were considered in a meeting of the Telecom Commission dated 10 October, 2007, in which only full

time members were present. In this context, the Committee thought it proper to examine the genesis of Telecom Commission and its Business Allocation Rules to obtain the veracity of arguments that questioned the decision making powers of the Commission. In this context, the Committee scrutinized the resolution dated 11 April, 1989 of Government of India through which the Telecom Commission was set up and the rules of business subsequently made for the functioning of the Telecom Commission. As per the rules of business of Telecom Commission, seven days notice for every meeting shall ordinarily be given to each member of the Commission. It also provides that the Chairman for special reasons may convene a meeting at shorter notice. Attendance in this meeting is to be by members in person. The quorum for meeting is three full time Members, present in person, including the Chairman. It provided that at meetings which the Chairman considers expedient to be held in his absence, the requirement shall be deemed to have been met if the Chairman authorizes another Member to place before the Telecom Commission and bring on record his views. Member (Finance) is required to be ordinarily present at meetings of the Commission. It also provided that if he is unable to attend meeting at which matters having financial implications are considered, he may authorize another member to place before the Commission and bring on record his views.

6.9 On the question of validity of approval accorded to any matter considered in a meeting of Telecom Commission where only full time members are present, Shri D.S. Mathur, the then Secretary, Department of Telecommunications, in evidence, clarified as follows:—

“...The Telecom Commission has a Finance Member. That Finance Member does not belong to the Telecom Department. He is a financial officer, a very senior officer. This financial Member has full authority to disagree with any decision that the Telecom Commission takes. If there is a disagreement, he has the right to approach the Finance Minister... Secondly, the Telecom Commission was formed under a notification issued in 1989. Subsequently, there were business rules made for the Telecom Commission. Nowhere in these business rules, it is said that if these four members and Chairman sit down and discuss an issue and take a decision, that would not be valid.”

6.10 Further, the Committee sent for details about the total number of meetings held by the Telecom Commission including the number of meetings held both by the Full Telecom Commission and internal Telecom Commission during the period 1998 to 2009. From the information made available to the Committee, it is seen, that in all 233 meetings were held by the Telecom Commission during the aforesaid period. Out of these, the Full Telecom Commission met for 44 times while internal Telecom Commission meetings were held on 189 times.

D. Access to Dual Technology

6.11 Four companies viz. Reliance Communications Limited, TATA Teleservices, Shyam Telelink Limited and HFCL Infotel Limited were providing CDMA based mobile service under UAS licence. Three companies (Reliance Communications Limited for 20 Service Areas, Shyam Telelink Limited for Rajasthan Service Area and HFCL Infotel Limited for Punjab Service Area) had applied for permission for using GSM Technology in the year 2006. Since the combination of technology (CDMA, GSM and/or any other) under the same licence was not permitted, the Department of Telecommunications had not acceded to their request till April, 2007, when the Department sought the recommendations of TRAI for use of alternate technology. Based on the recommendations of TRAI, the decision for use of alternate technology was taken for the first time by the Department of Telecommunications on 17 October, 2007. On 18 October, 2007, ‘in-principle’ approval was granted to the pending applications of three licensee companies for availing dual technology licences and spectrum. Reliance Communications Ltd. who submitted 14 applications on 6 February, 2006 seeking permission for use of GSM technology, paid the

requisite fee on 19 October, 2007. Start-up spectrum was granted to them for five Service Areas on 10 January, 2008 and remaining 9 Service Areas on 11 January, 2008. HFCL Infotel Ltd. and Shyam Telelink Limited submitted similar applications on 11 July, 2006 and 7 August, 2006 respectively. They paid the requisite fee on 12 December, 2007 and start-up spectrum was allocated to them on 10 September, 2008 and 23 December, 2008 respectively.

6.12 In the above context, the Committee enquired from Shri D.S. Mathur, the then Secretary, Department of Telecommunications as to why undue haste was exhibited in granting 'in-principle' approval for availing dual technology to three companies viz. Reliance Communications Ltd., Shyam Telelink Ltd. and HFCL Infotel Ltd. even before issuing of notification of the policy decision. The former Secretary, in evidence, deposed: "I had raised an objection to it."

6.13 The Committee have been informed that TATA Teleservices submitted applications for use of GSM technology on 19 October, 2007. 'In-principle' approval was granted to TATA Teleservices for use of GSM technology on 10 January, 2008 and they made the requisite fee on the same day. However, start-up spectrum was allocated to them between 22 April, 2008 and 9 March, 2009.

6.14 The representatives of the Cellular Operators Association of India (COAI) while deposing before the Committee took a position that the decision to allow Dual Technology spectrum was not provided for in the licence and that such a decision was arbitrary. COAI had also challenged the decision of the Government to permit Dual Technology through petitions filed before TDSAT and Delhi High Court. In this context, it is relevant to mention that Shri Goolam E. Vahanvati, the then Solicitor General of India, in a note submitted to the then External Affairs Minister, who was also the Chairman of the Group of Ministers (2006), had recorded his opinion on cross-over technology which reads as follows:

- (i) "COAI contends that there is a contractual right which limits the entry of new players. There is no substance in this plea. As a matter of fact, this plea was raised in 2001-2003 in relation to the WLL controversy and the TDSAT, by a majority, rejected this contention. The Chairman was in a minority. The COAI filed an SLP in the Supreme Court against the order of the TDSAT which was withdrawn, a fact which is suppressed in the pending petition. On the contrary, Justice Wadhwa's judgment is quoted as if it was a binding opinion of the Tribunal.
- (ii) It can hardly be disputed that the UASL is technology neutral. The requirement for indicating technology arose only when an application was made to the WPC for grant of spectrum because GSM spectrum and CDMA spectrum operate on different bands.
- (iii) This matter has been duly considered by the Regulator. The Regulator has recommended crossover and this recommendation has been accepted by Government. It is a matter of policy taken in larger public interest with a view to increasing competition and benefiting the consumer at large.
- (iv) Hence, the pleas taken by COAI, are not tenable."

E. Reference made to the Ministry of Law & Justice

6.15 The Committee have been informed that 575 applications for UAS Licences had been received in the Department of Telecommunications till the cut-off date i.e. 1 October, 2007 from 46 applicant companies in respect of 22 Service Areas in the country. Perusal of records [file No. 20-100/2007 (AS-I) Pt.C] indicated that the procedure followed hereto by the Department of

Telecommunications for grant of LOIs/Licences in respect of pending UASL applications had been to process them sequentially in order of receipt (date-wise) and take up the next applicant after the earlier applicant had been given LOI, as the number of applications were limited and all applications were assured that they will get LOI/Licence/spectrum in near future. The Department of Telecommunications was also asking the applicants to provide certain clarifications on information submitted by applicants if the information already available in the application was not having clarity or was insufficient including certain documents and compliances before issue of LOIs. According to the Department of Telecommunications, in the given scenario, the number of applications were very large and spectrum was limited and it might not have been at all possible for the Government to provide LOI/Licence/Spectrum to all applicants, if the existing procedure was followed. Moreover, existing procedure of sequential processing would also lead to inordinate delays depriving the general public of the benefits which more competition would bring out. To deal with such unprecedented situation, the Department of Telecommunications felt the need to adopt a methodology which synchronizes with legal base in processing of pending UASL applications and allotment of spectrum to various categories of spectrum seekers such as: (a) Additional requirements of existing operators (b) Initial allocation of spectrum to existing licensees and requirements for dual technology and (c) Spectrum to new UASL applicants.

6.16 In the aforesaid background, the Department of Telecommunications decided to seek the opinion of the Attorney General/Solicitor General of India on the methodology to be adopted for processing the new UASL applications and allotment of spectrum for dual technology. Accordingly, on 26 October, 2007 (**Annexure-22**), the Department of Telecommunications made a reference to the Ministry of Law and Justice to provide the opinion of the Attorney General /Solicitor General of India on certain proposals contained in the statement of case enclosed with the reference. In the statement of case, the Department of Telecommunications mentioned that the Government had since approved the usage of Dual Technology spectrum in terms of the approved policy. M/s. Reliance Communications Ltd., M/s. HFCL Infotel Ltd. and M/s. Shyam Telelink Ltd. were conveyed 'in principle' approval for use of dual technology spectrum. Accordingly, M/s. Reliance Communications Ltd. had paid the requisite fee amounting to Rs. 1651.5701 crores on 19 October, 2007. It was also mentioned that M/s. TATA Teleservices Ltd. who are UASL operator in 20 Service Areas had also applied for Dual Technology spectrum and a decision was required to be taken in this case. The Ministry of Law and Justice were requested to provide the opinion of the Attorney/Solicitor General of India on the following alternatives suggested by the Department of Telecommunications:

"Alternative-I: The applications may be processed on First-Come-First-Served basis in chronological order of receipt of applications in each Service Area as per existing procedure. LOI may be issued simultaneously to applicants (the number will vary based on availability of spectrum to be ascertained from WPC Wing) who fulfill the eligibility conditions of the existing UASL Guidelines and are senior most in the queue. The time limit for compliance should be 7 days as per the existing provision of LOI and 15 days for submission of PBG, FBG, entry fee, etc. as per existing procedure. However those who fulfill the condition of LOI within stipulated time, their seniority for licence/spectrum will be on the basis of their application date. The compliance to eligibility conditions as on date of issue of LOI may be accepted. No relaxation of this time limit will be given and the LOI shall stand terminated after the stipulated time period. (However, the applicant may have the right to apply for new UASL licence again as and when the window for submission of application of new UAS Licence is opened again). Subsequent application may be considered for issue of LOI if the spectrum is available.

Alternative-II: LOIs to all those who applied by 25 September, 2007 (the date on which the cut-off date for receipt of applications were made public through press) may be issued in each Service Area as it is expected that only serious players will deposit the entry fee and seniority for licence/spectrum be based on (i) the date of application or (ii) the date/time of fulfilment of LOI conditions.

Alternative-III: The Department of Telecommunications may issue LOIs to all eligible applications simultaneously received up to cut-off date. Since LOIs will clearly stipulate that spectrum allocation is subject to availability and is not guaranteed, the LOI holders are supposed to pay the entry fee if their business case permits them to wait for spectrum allocation subject to availability and initial roll out using wireline technology.

Alternative-IV: Any other better approach which may be legally tenable and sustainable for issuance of new licences.

It is also to be considered if the eligibility criterion or other conditions of UASL Guidelines can be changed at this stage for grant of LOIs to pending applications by making some stringent conditions such as network, roll-out obligations, experience, etc. If yes, then what should be the procedure to be followed?

Issue of LOIs to M/s. TATA and others for usage of dual technology spectrum based on their applications received after 18 October, 2007. Whether (i) to treat their request prior to existing applicants or (ii) to treat their request after processing all 575 applications."

6.17 The reference made to the Ministry of Law and Justice was processed in the Department of Legal Affairs. On 1 November, 2007, the then Law Secretary submitted a note to the Minister of Law and Justice, which *inter alia* proposed "The questions posed for the opinion of Attorney General/Solicitor General appear to be too broad and the issue of disposal of the applications for UAS appears to be mixed up with the allotment of spectrum. Before the request for seeking the views of the Ld. Attorney General/Solicitor General the issues will have to be refined further". On the same note, the Minister of Law and Justice minuted in the file which read as follows: "In view of the importance of the case and various options indicated in the statement of the case it is necessary that the whole issue is first considered by an Empowered Group of Ministers and in that process legal opinion of the Attorney General can be obtained". On the same day, i.e. on 1 November, 2007, the Ministry of Law and Justice (Department of Legal Affairs) communicated the observation of the Minister of Law and Justice to the Department of Telecommunications.

6.18 It is seen from the noting dated 2 November, 2007 [File No. 20-100/2007-AS-I (Pt.C)] by Director (AS-I) that the opinion rendered by the Minister of Law and Justice was discussed between the DDG (AS) and Member (T) in the Department of Telecommunications, who had, in turn discussed the matter with the Minister of Communications and Information Technology. The note further says that it was discussed and felt in the meeting that the proposed advice was out of context. It was, therefore, advisable that the Department follow the existing policy for grant of new licences.

6.19 The note dated 2 November, 2007 submitted by Director (AS-I) *inter-alia* stated:

"In view of TRAI recommendation of no cap on number of operators, large number of applications were being received in the Department of Telecommunications. Therefore, it was decided that no more applications shall be received after 1 October, 2007 till further orders. Till the cut-off date for receipt of UASL applications, 575 applications were received from 46 companies for 22 Service Areas. In order to avoid any legal implications of

cut-off date, all the applications received till the announcement of cut-off date in the press *i.e.* 25 September, 2007 may be processed as per the existing policy and decision on remaining applications may be taken subsequently.

WPC has indicated an availability of circle-wise spectrum based on the internal exercise and likely availability once M/o Defence vacates the spectrum being used by them. Since 75 MHz has been earmarked for 2G in 1800 band of which a maximum of about 15 MHz has been released. Therefore, approximately 60 MHz is left unused so far which could be utilized for new licences and additional requirement of existing operators. Since the availability of spectrum is not immediately guaranteed in all the service areas as it needs to be vacated by the Defence, a clause may be inserted in the LOI that spectrum allocation is not guaranteed and shall be subject to availability.

In view of above, a decision may be taken on the number of LOIs to be issued in each circle. While deciding on the number of LOIs it may also be taken into account that only serious players may deposit the entry fee who can afford non-availability or delays in spectrum allocation and roll out using wire-line technology only. It may also be noted that large number of operators per circle will lead to real competition and bring down prices of telecom service.

.....Since the applications are very large in number a comprehensive evaluation has not been done and shall be completed after taking detailed clarification/compliances/ documents from the application along with LOI."

Based on the above notings, the Minister of Communications and Information Technology on 2 November, 2007, recorded in the file "Approved: LOI may be issued to the applicants received upto 25 September, 2007".

6.20 On the same day *i.e.* on 2 November, 2007, the Minister of Communications and Information Technology wrote a letter to the Prime Minister apprising him about the latest developments in the Department of Telecommunications, which read as follows:

- "(i) After the announcement of TRAI Recommendations on Review of Licence Terms and Conditions for (Telecom) Access Service Providers on 28 August, 2007, an unprecedented number of applications were being received by the Department due to Recommendation of TRAI recommending "No Cap" on number of Licences in a Service Area.
- (ii) As unprecedented number of applications were being received, a cut-off date of 1 October, 2007 was announced by the Department on 24th September, 2007 and a Press Release was given. In all 575 applications for 22 Service Areas were received.
- (iii) The Department wanted to examine the possibility of any other procedure in addition to the current procedure of allotment of Licences to process the huge number of applications. A few alternative procedures as debated in the Department and also opined by few legal experts were suggested by the Department of Telecom to Ministry of Law & Justice to examine its legal tenability to avoid future legal complications, if any. Ministry of Law and Justice, instead of examining the legal tenability of these alternative procedures, suggested referring the matter to empowered Group of Ministers. Since, generally new major policy decisions of a Department or inter-departmental issues are referred to GoM, and, needless to say that the present issue relates to procedures, the suggestion of Law Ministry is totally out of context.

- (iv) Now, the Department has decided to continue with the existing policy (first-come-first-served) for processing of applications received up to 25 September, 2007, *i.e.* the date when the news-item on announcement of cut-off date appeared in the newspapers. The procedure for processing the remaining applications will be decided at a later date, if any spectrum is left available after processing the applications received up to 25 September, 2007.
- (v) As the Department is not deviating from the existing procedure, I hope this will satisfy the industry."

6.21 In the meantime, the Prime Minister *vide* his letter dated 2 November, 2007 urged upon the Minister of Communications and Information Technology to address the following issues urgently with a view to ensuring fairness and transparency before he takes any further action in the matter.

- (i) Enhancement of subscriber linked spectrum allocation criteria;
- (ii) Permission to CDMA Service Providers to also provide services on the GSM Standard and be eligible for spectrum in the GSM Service band;
- (iii) Processing of a large number of applications received for fresh licences against the backdrop of inadequate spectrum to cater to overall demand;
- (iv) In order that spectrum use efficiency gets directly linked with correct pricing of spectrum, consider (a) introduction of a transparent methodology of auction, wherever legally and technically feasible, and (b) revision of entry fee, which is currently benchmarked on old spectrum auction figures; and
- (v) Early decision on issues like rural telephony, infrastructure sharing, 3G, Broadband, Number Portability and Broadband Wireless Access, on which the TRAI has already given recommendations.

6.22 The Minister of Communications and Information Technology again *vide* his communication dated 2 November, 2007 *inter alia* stated "I would like to inform you that there was, and is, no single deviation or departure in the rules and procedures contemplated, in all the decision taken by my Ministry and as such full transparency is being maintained by my Ministry and I further assure you the same in future". Providing clarification with respect to the issues raised in the letter of the Prime Minister dated 2 November, 2007, the Minister of Communications and Information Technology stated as follows:

"Enhancement of subscriber linked spectrum allocation criteria: TRAI had recommended in August, 2007, enhancement in subscriber linked criteria for allotment of additional spectrum to existing operators in order to increase spectrum efficiency which is scarce. Independent to this, Telecom Engineering Centre (TEC), which is the competent body to look into such matter, was asked to examine the spectrum efficiency issues scientifically. TEC submitted its recommendations on 26 October, 2007, which was in principle accepted by me. It has been placed on the website of the Ministry and therefore, anybody much less COAI is at liberty to challenge the report of TEC with scientific basis. However, the fact still remains that no such attempts have been honestly made by them.

Permission to CDMA service providers to also provide services on the GSM standard and be eligible for spectrum in the GSM service band: This matter was referred to TRAI for its comments on use of dual technology. TRAI, after due deliberations on the issue, recommended use of dual technology, enabling existing Universal Access Service Licensees

(UASL) to provide services under both (GSM and CDMA) technologies. It was examined in the Ministry and was agreed to as they will be able to roll out the network fast which will ultimately benefit the customers because of increase in teledensity and also resulting lower tariff. These operators will get spectrum only after the allotment of spectrum to the existing operators according to their eligibility and also licence holders awaiting for initial spectrum.

Processing of a large number of applications received for fresh licences against the backdrop of inadequate spectrum to cater to overall demand: The issue of auction of spectrum was considered by the TRAI and the Telecom Commission and was not recommended as the existing licence holders who are already having spectrum upto 10 MHz per Circle have got it without any spectrum charge. It will be unfair, discriminatory, arbitrary and capricious to auction the spectrum to new applicants as it will not give them level playing field.

I would like to bring it to your notice that the Department of Telecommunications has earmarked totally 100 MHz in 900 MHz and 1800 MHz bands for 2G mobile services. Out of this, so far a maximum of about 35 to 40 MHz per Circle has been allotted to different operators and being used by them. The remaining 60 to 65 MHz, including spectrum likely to be vacated by Defence Services, is still available for 2G.

Therefore, there is enough scope for allotment of spectrum to few new operators even after meeting the requirements of existing operators and licensees. An increase in number of operators will certainly bring real competition which will lead to better services and increased teledensity at lower tariff. Waiting for spectrum for long after getting licence is not unknown to the Industry and even at present Aircel, Vodafone, Idea and Dishnet are waiting for initial spectrum in some Circles since December, 2006.

I would like to bring to your kind notice that M/s. Aircel and M/s. Spice Telecom, who were party to the petition to the TDSAT challenging the Department of Telecommunications orders on acceptance of TRAI recommendations, have disassociated with the petition after having clarification from me. These operators have openly admitted that the COAI had misled them, media and the public in general.

Since assuming charge, on more than three occasions I have reviewed all the long pending TRAI recommendations announced during the tenures of my predecessors including Number Portability, 3G, Wimax, etc. and directed my officers to process them in a transparent manner. As a result we are almost reaching to shape the modalities to auction 3G and Wimax as contemplated by TRAI. I am told that divergence of views on implementation of Number Portability have been expressed by various stakeholders and I am trying to resolve it. The final decision on all these recommendations will be taken soon.

To conclude, I would like to assure you that all my decisions and endeavours are honestly aimed at development of the telecom sector, increasing the teledensity and lowering the tariff for the benefit of the public in general and customers in particular."

6.23 Perusal of File No. 20-100/2007-AS-I(Pt.C) revealed that the modalities for processing pending applications for UASL and issuance of LOIs were further discussed in a meeting taken by the Minister of Communications and Information Technology on 6 November, 2007 with Secretary (T), Member (T) and Additional Secretary (T) where DDG (AS) was also present. DDG (AS) in turn had discussed the matter with Director (AS-I). It is also seen from the aforesaid file that before seeking the opinion of Attorney General/Solicitor General of India, Shri D.S. Mathur,

the then Secretary, Department of Telecommunications on 25 October, 2007 in his note sought to draw the attention of the Minister of Communications and Information Technology to the following: "The policy has stipulated that availability of adequate frequency spectrum is essential for entry of additional operators. Hence, the options to issue LOIs/licences to all 575 applicants do not stand in the light of this provision. NTP-1999 was approved by the Union Cabinet and only the Cabinet can effect a change in the policy". The observation of the Secretary was examined in the light of the provisions contained in NTP-1999. Dealing with the issue in the file, Director (AS-I) in his note dated 7 November, 2007 mentioned that regarding CMSPs, NTP-1999 (para 3.1.1) *inter alia* stipulates that: "...Availability of adequate frequency spectrum is essential not only for providing bandwidth to every operator but also for entry of additional operators...it is proposed to review the spectrum utilisation from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirement of market, competition and other interest of public. The entry of more operators in a service area shall be based on the recommendation of the TRAI who will review this as required and no later than every two years".

With regard to Fixed Service Providers, NTP-1999 (para 3.1.2), *inter alia* stipulates that "...While market forces will ultimately determine the number of fixed service providers, during transition, number of entrants have to be carefully decided to eliminate non-serious players and allow new entrants to establish themselves. Therefore, the option of entry of multiple operators for a period of five years for the service areas where no licence have been issued is adopted. The number of players and their mode of selection will be recommended by TRAI in a time-bound manner....

....As in the case for cellular, for WLL also, availability of appropriate frequency spectrum as required is essential not only for providing optimal bandwidth to every operator but also for entry of additional operators. It is proposed to review the spectrum utilisation from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, competition and other interest of public..."

F. Approval of Procedure for Issue of Unified Access Service Licences

6.24 The note of Director (AS-I) dated 7 November, 2007 indicated that during the discussions, it was considered appropriate that for processing of pending applications for grant of UAS Licences, the following procedure might be adopted:

- (i) "The pending applications for UASL shall be processed as per the existing policy.
- (ii) To expedite the processing of applications, a committee consisting of Officers from AS, LF division and IP Cell shall examine the applications for eligibility and other parameters as per the Guidelines/terms and conditions of licence agreement and Government policy. Opinion of Legal Advisor, Department of Telecommunications is to be taken wherever required.
- (iii) Separate file for each applicant company shall be processed for obtaining the approval for issuance of LOIs. LOIs may be issued to eligible applicants, whose applications are compliant to the eligibility conditions. In case there are some minor observations/deviations in any application, the same may also be considered for issuance of LOIs. However, in such case, we may seek complete compliance alongwith the acceptance of LOI from the applicant company. This will also require approval of competent authority in each case separately based on the observations made by the examining committee.
- (iv) As per the existing policy, the LOIs were granted based on date of applications to satisfy the principle of first come first served basis. This principle was also placed before Parliament in reply to Rajya Sabha question No. 1243 answered on 23 August, 2007.

- (v) Number of LOIs to be issued in each service area is to be decided.
- (vi) Application of M/s. TTML, M/s. TTSL and M/s. RTL for dual technology may be considered as per direction of TDSAT on dual technology.
- (vii) Shri R.K. Gupta, ADG (AS-I) may be authorised for signing the LOIs on behalf of President of India.
- (viii) A copy of draft LOI is placed below for kind perusal/approval. This will be legally vetted after the approval of policy and before issue."

The file went through DDG(AS), Member (T)-on tour, Member (S) and Secretary, Department of Telecommunications.

6.25 On 7 November, 2007, the Minister of Communications and Information Technology accorded approval to the suggested procedure to be adopted by the Department of Telecommunications for processing of pending applications for grant of new UAS licences.

6.26 On 15 November, 2007, the Minister of Communications and Information Technology wrote to the Prime Minister, referring to their discussion held on 14 November, 2007, wherein the Prime Minister had mentioned that Shri Kamal Nath, the Minister of Commerce and Industry had written a letter to the Prime Minister expressing his concern on developments in the telecom sector and had also advised for setting up of a Group of Ministers to sort out the issues. In his letter, the Minister of Communications and Information Technology brought the following facts to the kind notice of the Prime Minister:

"I agree that telecom tariff in the country are one of the lowest in the world. However, these may be seen in conjunction with the lower input costs and per capita income in the country.

I do share concern of my colleague regarding international investment in the telecom sector. However, I would like to bring to your kind notice that increasing competition will give further boost to the investment in the telecom sector. The increased competition will bring down tariff which will result in wider spread of telecom services in rural and remote areas and also bring in the ambit new customers which still cannot afford these services. It will also help in reducing cost of telecom intensive industries and make them domestically and internally more competitive.

In the last six months, Indian industry, including telecom sector has shown good growth. The success of telecom sector is evident from the fact that on an average, 7 million subscribers are being added per month and quarterly result of these companies have shown one of the best results ever which is also reflected in the increasing share prices of these companies on Indian Stock Exchanges.

As regards to suggestion of setting up of a Group of Ministers (GOM), it is mentioned the GOM are generally set up for new major policy decisions of a Department or inter-departmental issues. Since the Department has decided to continue with the existing policy (first-come-first-served) for processing of applications, the suggestion of Shri Kamal Nath for setting up GOM is out of context.

I would also like to clarify that I am equally concerned about the image of India across the globe and assure you that all the decisions taken by me will be guided by the larger interest of the public, competition and growth of telecom sector."

The letter of Minister of Communications & Information Technology was acknowledged by the Prime Minister *vide* his letter dated 21 November, 2007. (**Annexure-23**)

6.27 A perusal of file No. 20-100/2007-AS-I (Pt.C) indicated that after the procedure for processing of pending applications for grant of new UAS licences was approved by the Minister of Telecommunications and Information Technology, draft LOI was submitted for vetting by the Legal Advisor of the Department of Telecommunications on 8 November, 2007. On 8 November, 2007, DDG (AS) in the same note *inter alia* recorded: "The draft LOI could not be seen by LA (T) as requested ... LA(T) was of the opinion that matter needs to be examined by the Law Ministry, as this was earlier referred to Law Ministry. This will be discussed within the Department of Telecommunications separately". In his note DDG (AS) suggested that in the meantime, the draft LOI might be vetted from LF Cell and the note was accordingly forwarded to DDG (LF).

6.28 In the context of vetting draft LOI, Director (LF-III) *vide* note dated 23 November, 2007 offered the following comments:

"Lols are issued in case the applicants are eligible for grant of licence. We have examined about 22 files relating to application for UASL and most of the applications have been found wanting in one respect or another. In such a situation desirability of issuing LOI conveying the approval on behalf of the President of India for award of licence needs to be considered afresh from all angles specially the legal angle. The current proposal is to issue LOI along with an annexure seeking compliance/clarifications which will have direct bearing on the eligibility of the applicant and date of his eligibility. LOIs issued in the past never had such an annexure.

If the LOI is to be given while the eligibility is not yet clear or necessary clarifications are yet to be received, it is likely that there may be some applicants that get LOI but are not found eligible later. Since the Entry Fee is non-refundable and the PBG, FBG is proposed to be encashed if the applicant is found to be eligible later (as per para 9 of the draft LOI), it is important to apprise the applicant clearly of such an eventuality by including suitable para/clause in the LOI. The applicants should also be informed of their deficiency in very clear terms to enable them to determine their own eligibility before making any financial commitments.

For this purpose, it is proposed that a clause on following lines may be added to the LOI after suitably modifying the para 9 of draft LOI.

- (a) The Entry Fee is non-refundable. In case it is found that the applicant is not eligible for the UAS licence, the paid Entry Fee shall be forfeited and the submitted PBG and FBG shall be encashed and forfeited. In case the applicant is found to be ineligible on the date of application, and subsequently (but before the signing of licence) achieves compliance with the LOI/UAS Licence conditions, the date of priority will be the date on which he becomes eligible. The applicant must accept this date or withdraw his application. Withdrawal of application shall result in forfeiture of the paid entry fee and encashment and forfeiture of the submitted PBG and FBG.
- (b) The authorised signatory, empowered by Power of Attorney from the company approved by Board Resolution, shall provide a certificate accepting the condition of (a) above. The certificate shall be countersigned by the Company Secretary of the company.

The para No. 3 in LOI making the payment of Entry Fee as the priority date has been deleted. However, it would be appropriate to clarify as to what the priority date would

be. It appears logical to keep the date of application as date of priority provided the applicant is able to establish that he is eligible as on the date of application and is also eligible when the LOI is being issued. It is suggested that this should be clarified to the applicants by inserting a suitable para in the LOI for the sake of clarity especially in view of the large number of applications received.

Similarly, the effective date of the Licence should be the date of signing of licence as per usual practice.

In para 5 of the Draft LOI it has been clarified that the payment of entry fee shall not confer right on the licensee for the allocation of radio spectrum which shall be allotted as per existing policy/Guidelines as amended from time to time subject to availability. In this regard it is pointed out that the present occasion is unique in the sense that a large number of applications are being processed simultaneously and it would be appropriate for all concerned to know the likelihood of allotment of spectrum to them. NTP-1999 already stipulates that 'availability of adequate frequency spectrum is essential' particularly in these days when it is the wireless services that are the order of the day and these services cannot be provided without spectrum. Hence, it would be appropriate that the prospective licensees know the approximate time within which they will get spectrum. In any case for spectrum allocation also, the date of priority should also be the same as the date of his application provided he is found eligible on the date of application and he deposits the Entry Fee and complies to the LOI within the stipulated time.

In case the applicant has not provided all the documents to prove compliance with LOI/ Licence conditions, it is suggested that the applicant should be apprised of all discrepancies/deficiencies specific to his application. These discrepancies/deficiencies should be communicated as an annexure to the LOI.

The position of equity and networth should be furnished as on the date of the application and as on 30 September, 2007 (the date of last quarterly results) since the applicant is required to be eligible and also maintain it, particularly the networth position. As per Guidelines, position with regard to direct and indirect foreign investment and FIPB clearance wherever required should also be furnished as on the date of the application and as obtaining currently. The networth certificate of the Company and its promoters should be given by statutory auditor of the company and countersigned by the Company Secretary. Para 10, 11, 12, 13, 14 and 15 of the annexure to LOI are required to be modified accordingly.

In para 30, the first line is suggested to read "In case the applicant company does not have any information to furnish against any of the above since it does not relate to it, either 'Nil', or 'Not applicable', as the case may be, should be mentioned. Putting dash or blank shall be treated as incomplete compliance.

We would recommend that LOI be granted in the existing legally vetted format only after all the eligibility conditions are met and the application is complete in all respects."

G. Presentation made before the Cabinet Secretary by Shri D.S. Mathur, Former Secretary, Department of Telecommunications

6.29 The Committee have been informed that a presentation was made by Shri D.S. Mathur, the then Secretary, Department of Telecommunications before the Cabinet Secretary on 20 November, 2007 about the developments taking place in the Department at that point of

time. In this context, the Committee sought written information from Shri K.M. Chandrasekhar, former Cabinet Secretary bringing out details of the issues on which the former Secretary made a presentation. Drawing reference to the Record Note of Presentation maintained in the Cabinet Secretariat, it was stated that the presentation covered the basic guiding principles for allocation of Radio Frequency Spectrum, procedure for spectrum allocation, existing criteria for additional spectrum, TRAI's recommendations, Telecom Engineering Centre recommendations, etc. The presentation was reportedly general in nature and intended to explain the technology of spectrum, spectral efficiency, allocation criteria, dual spectrum allocation, vacation of spectrum by Defence, providing capacity to Defence through optical fibre networks and the additional spectrum *i.e.* likely to be made available through vacation by defence. On the question of the 575 applications for spectrum, quoting Shri D.S. Mathur, it was stated, "it has been decided by the Department that it would be based on existing criteria and not through auction route. This is in line with TRAI recommendations. However, for 3G spectrum allocation will be considered on auction basis". The written information from the former Cabinet Secretary mentioned that the Finance Secretary wanted to know whether it was possible to consider the auction route even for 2G spectrum. According to the record note of presentation, "Secretary, Department of Telecommunications responded that this matter has been dealt with. TRAI has recommended that for 2G services existing criteria should continue. The Department has already approved it on the basis of TRAI recommendations. A basis for following existing criteria was that there should be a level playing field for a new entrant *vis-à-vis* existing big players. However, for 3G spectrum, a new service, the Department is likely to go in for auction. Finance Secretary also indicated that if an exchange for buying and selling of communication frequencies is feasible, spectrum prices would be properly discovered. Such an exchange exists in the USA, but it should be for the same product/services compatible to frequency allocated for specific usage". The written note from the then Cabinet Secretary further states that Shri D.S. Mathur had clarified at the meeting that (a) the Department had decided that licences would be granted to 575 applicants "based on existing criteria and not through auction route", (b) "this is in line with TRAI recommendations", (c) a committee had been set up to examine the reports of the Telecom Engineering Centre and TRAI for "deciding the subscriber basis for allocation of spectrum and (d) "for 3G spectrum allocation would be considered on auction basis".

6.30 The Committee desired to know from the former Cabinet Secretary, whether objections raised through various communications by the Ministry of Finance on non-revision of entry fee and clear stand taken by the then Minister of Communications and Information Technology on the issue were also brought to his notice by the then Secretary, Department of Telecommunications on any occasion. In the written note Shri K.M. Chandrasekhar stated that he did not recall any specific instance of the Secretary, Department of Telecommunications bringing any specific problem to his notice regarding the communications of the Ministry of Finance of the stand taken by the then Minister of Communications and Information Technology. According to him, the former Secretary's position was clarified during the presentation made by him on 20 November, 2007. The written note further states: "From the material I have received from the Cabinet Secretariat in response to the queries made by the Hon'ble JPC, I see no record of the Telecom Secretary having raised the issue of differences with his Minister in his correspondence with the Cabinet Secretariat or in his letters to the Ministry of Finance, copied to the Cabinet Secretariat".

H. Follow-Up Communication between Ministry of Finance and the Department of Telecommunications

6.31 Drawing reference to the presentation made before the Cabinet Secretary, Shri D. Subbarao, former Finance Secretary wrote to Shri D.S. Mathur, Secretary, Department of Telecommunications on 22 November, 2007, which read as follows:

"...During the presentation on the Spectrum Policy to the Cabinet Secretary on 20 November, 2007, you had mentioned among other things, that: (i) three CDMA

operators were given crossover licence for GSM operators; (ii) the fee for this licence was determined at Rs.1600 crore (for all India operations with pro-rata determination for less than all India operations); and (iii) that one of the licensees has already paid the licence fee.

The purpose of this letter is to confirm if proper procedure has been followed with regard to financial diligence. In particular, it is not clear now how the rate of Rs. 1600 crore, determined as far back as in 2001, has been applied for a licence given in 2007 without any indexation, let alone current valuation. Moreover, in view of the financial implications, the Ministry of Finance should have been consulted in the matter before you had finalized the decision.

I request you to kindly review the matter and revert to us as early as possible with response to the above issues. Meanwhile, all further action to implement the above licences may please be stayed. Will you also kindly send us copies of the letters of permission given and the date?"

6.32 In response, Shri D.S. Mathur *vide* his letter dated 29 November, 2007 addressed to Shri D. Subbarao stated as follows:

'As per Cabinet decision on 31 October, 2003 accepting the recommendations of Group of Ministers (GoM) on Telecom matters, headed by the then Hon'ble Finance Minister, it was *inter-alia* decided that "The recommendations of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted. DoT may be authorised to finalise the details of implementation with the approval of the Minister of Communications and Information Technology in this regard including the calculation of the entry fee depending on the date of payment based on principle given by TRAI in its recommendations." In terms of this Cabinet decision the amendment to NTP-1999 was issued on 11 November, 2003 declaring *inter-alia* that for telecommunication services the licence for Unified Access (Basic and Cellular) services permitting licensees to provide Basic and/or Cellular Service using any technology in a service area shall be issued.

The entry fee was finalised for UAS regime in 2003 based on the decision of the Cabinet. It was decided to keep the entry fee for the UAS licence the same as the entry fee of the fourth cellular operator, which was based on a bidding process in 2001.

The dual technology licences were issued on TRAI recommendations of August, 2007. TRAI, in its recommendations dated 28 August, 2007, has not recommended any changes in entry fee/annual licence fee and hence no changes were considered in the existing policy.'

6.33 The Ministry of Finance (Department of Economic Affairs) in its presentation made before the Committee stated that no communication was sent by the Department of Economic Affairs in response to the letter dated 29 November, 2007 from the Secretary, Department of Telecommunications. Explaining the position further, the Department of Economic Affairs in a written note stated that after receiving the letter from the Department of Telecommunications, a self contained note had been prepared by Ms. Shyamala Shukla, Director (Infrastructure) on 17 December, 2007 (**Annexure-24**). The note was marked to JS (on tour) and AS (Economic Affairs). It has been stated that there are however, no notings thereafter and the file has not been processed further. It has been further stated that Ms. Sindhushree Khullar, the then Additional Secretary (Economic Affairs) had put up on 9 January, 2008 (**Annexure-25**), in a separate file,

a note enclosing position paper on spectrum policy. The subject header of the note reportedly mentioned the references of the Department of Economic Affairs letter of 22 November, 2007 and the Department of Telecommunications reply of 29 November, 2007. The note of the Additional Secretary (Economic Affairs) recommended both revision of the entry fee fixed in 2003 as well as adoption of an auction methodology for determination of the spectrum usage charges. The position paper was prefaced with a note of the Additional Secretary (Economic Affairs) which *inter-alia* mentioned that she had been directed to attend the meeting of the Full Telecom Commission, which had been scheduled to be held on 9 January, 2008 and had now been postponed to 15 January, 2008. In another file, Additional Secretary (Economic Affairs) had *inter-alia* noted the following on 15 April, 2008 "Para 6: In pursuance of FM's directions on PUC, a comprehensive note on spectrum policy including utilisation, allocation and pricing of 2G spectrum was placed before him, on the basis of which he had issued a note to PM dated 15 January, 2008. Kind attention is invited to the fact that the Cabinet decision of 31 October, 2003 that mandated consultation with Ministry of Finance is at para 3.1 of my note. FM had taken cognisance of this decision while issuing the note to PM".

I. Noting of Member (Finance), Telecom Commission

6.34 The note dated 23 November, 2007 from Director (LF-III) was submitted to Member (Finance). Ms. Manju Madhwan, Member (Finance) in her noting dated 30 November, 2007, submitted to the Minister of Communications and Information Technology, mentioned that comments of Finance Wing in the Department of Telecommunications might be considered. She also mentioned in the note, communication dated 22 November, 2007 received from the Department of Economic Affairs wherein they had expressed concern about offering the rates obtained in 2001 as entry fee even in 2007, without any indexation/current valuation. The Department of Economic Affairs wanted to be consulted in the matter. She recorded that though the communication was in the context of crossover licence and a reply had been sent, it was equally applicable in the context of issuing licences to the applicants of new UASL. Member (Finance) further recorded:

"The entry fee for the UAS licence is based on the rates/amounts obtained in the tender for award of fourth cellular licence which was initiated in 2001.

In 2003 when TRAI came out with recommendations for UAS licence it recommended those rates of IV licence as entry fee for reward of UAS licence. Since then these rates have been adopted as entry fee for award of UAS Licence.

Since the rates have not been revised and the Finance Secretary has raised the issue, I am of the view that this issue should be examined in depth before any further steps are taken in this matter."

J. Decision of the Minister of Communications and Information Technology to Issue LOIs for Unified Access Service Licences

6.35 The Minister of Communications and Information Technology in his noting dated 4 December, 2007 while commenting on the suggestions given by LF Division and Member (Finance) *inter-alia* recorded:

"....concerned officers have neither upto date knowledge of UASL guidelines nor have bothered to carefully go through file. The suggestion on the date of priority for allotment of spectrum is clearly defined in the WPC guidelines. Since these suggestions are not factually correct and as such they should be ignored.

These type of continuous confusions observed on the file, whoever be the officer concerned do not show any legitimacy and integrity but only their vested interests.

The matter of entry fee has been deliberated in the Department, several times in the light of various guidelines issued by the Department and recommendations of TRAI. And, accordingly decision was taken that entry fee need not be revised. On the above lines, Secretary (T) has also replied to the Finance Secretary's letter dated 22.11.2007. Member (F) should have checked the facts with Secretary (T) before putting up the note on the file.

Accordingly, the approval (obtained on 7 November, 2007) regarding issue of LOIs should be implemented. For this purpose the LOI proforma as issued in the past may be issued for LOIs in these cases also.

However, separate letter seeking duly signed copies of all the documents submitted at the time of applying for UASL as per existing guidelines may be obtained."

6.36 During evidence, Shri D.S. Mathur informed the Committee that he alongwith the other members of the Telecom Commission, was in favour of revising the old entry fee but the Minister did not agree to any such revision. However, the Committee could not find any such proposal on record that suggested revision of entry fee for new UASL by the Department of Telecommunications and submitted to the Minister of Communications and Information Technology for consideration.

6.37 On 26 December, 2007, the then Minister of Communications and Information Technology wrote a letter to the Prime Minister. The contents of the letter are as follows:—

"Kindly refer to my letters dated 2.11.2007, and subsequent personal discussions with you on various issues related to Telecom sector. As discussed with you I also had several discussions with the External Affairs Minister, who is also heading GOM on vacation of spectrum on these issues. The major issues viz., (i) Subscriber based criteria for additional spectrum to existing operators; (ii) issue of dual technology; and (iii) issue of new licences were discussed with External Affairs Minister at length. Since the cases filed by Cellular Operator Association of India (COAI) on these issues before Telecom Disputes Settlement & Appellate Tribunal (TDSAT) and Delhi High Court are being represented by Solicitor General of India, he was also called for the discussions to explain the legal position.

I must recall that there are three reports available with the DoT with regard to subscriber based criteria for additional spectrum to existing operators viz., Telecom Regulatory Authority of India (TRAI), Telecom Engineering Centre (TEC) and the Report of the Committee which was constituted under the chairmanship of Additional Secretary, DoT with two Professors from IIT, Kanpur and IIT, Chennai who have done their specialisation in Radio Frequency. For one or the other flimsy reason, COAI neither accepted any one of the report nor co-operated with the DOT to arrive at an amicable solution. Similarly, on use of Dual Technology also, they want to challenge the policy decision taken by the Government on the basis of TRAI recommendations.

Since TDSAT refused to grant stay they moved the Delhi High Court for stay on subscriber based criteria, dual technology and in addition to these, the issue of new licences. This clearly shows that the attitude of COAI is to maintain their monopoly in the sector by avoiding healthy competition and level playing field. The only malicious intention of COAI, it appears, is that they want to procrastinate the issues through frivolous and vexacious Court proceedings endlessly.

As I have already promised to you, my efforts in this sector are intended to give lower tariff to the consumer and to bring higher tele-density in the country, more specifically in rural areas. It is needless to say that the tariff in India is not as cheap as claimed in terms of purchasing power parity and standard of living of the people of the country since there is no tariff fixation.

In these circumstances, the discussions with External Affairs Minister and Solicitor General of India have further enlightened me to take a pre-emptive and pro-active decision on these issues as per the guidelines and rules framed there under to avoid any further confusions and delay. The issue wise details and my decisions are given in the enclosed annexure."

The issues brought out in the Annexure as referred to in the aforesaid letter read as follows:—

"1. Subscriber Linked Spectrum Allocation Criterion for CMTS/UAS Licensees: DoT provides Radio spectrum for providing mobile services to Wireless Operating Licence holders for roll out of GSM/CDMA services. An initial spectrum of 4.4 MHz for GSM and 2.5 MHz for CDMA based technology is provided to operators. Additional spectrum is provided to operators based on the number of subscribers, availability of spectrum, optimal use of spectrum, competition and other interest of public. To ensure optimal utilization of spectrum, TRAI while giving recommendation on other issues as requested by the DoT, also recommend that "there is a need to tighten the subscriber criteria for all the service areas so as to make it more efficient from the usage and pricing point of view. In order to frame new spectrum allocation criteria, a multi-disciplinary committee may be constituted. However, it is necessary to enhance the present subscriber norms as an adhoc measure so that the task of spectrum allocation is not stalled". This recommendation was accepted by the department on 17.10.2007.

However, COAI and existing GSM operators challenged recommendations of TRAI saying it lacks scientific basis. In the meantime, TEC which was simultaneously working on the subscriber base criteria for allocation of additional spectrum submitted its report to the Ministry which was accepted in-principal. Incidentally, TEC norms, which were based on scientific basis, came out to be stricter than TRAI norms. COAI challenged these reports in the TDSAT. To avoid any controversy and to find an amicable solution, as suggested by TRAI a Committee headed by Additional Secretary, DoT, including Representatives of COAI and AUSPI and two professors from IIT, Kanpur and IIT, Chennai was setup. However, on 7.12.2007, COAI disassociated itself from the proceedings of the Committee. The Committee has submitted its report and has suggested that another Committee as suggested by TRAI may be set up to look into broader issues of allotment of additional spectrum and till then recommended to go with TRAI's interim report for allotment of additional spectrum. This recommendation of the Committee is accepted.

In view of the above, DoT is proceeding ahead to implement the recommendation of TRAI on subscriber based criteria as an interim measure and allot additional spectrum to eligible existing operators as per TRAI norm, followed by those who got licence in Dec. 2006, dual technology and to new applicants as and when licences are given. An affidavit to this effect will be filled in both TDSAT and Delhi High Court.

2. Use of Dual Spectrum (Alternate technology) by UAS Licensees: DoT sought the recommendations of TRAI on use of Dual Technology/Alternate Technology under UAS Licence and other issues on 13.4.2007 (prior to taking over by the present Minister). The recommendations of TRAI were received by DoT on 29.08.2007 which suggested that

"A licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternative technology or which would be paid by a new licensee going to use that technology". This recommendation was accepted by the department on 17.10.2007.

This policy makes existing UAS Licence holders (Reliance, TATA, Airtel, Vodafone, etc.) eligible for allotment of spectrum for alternate technology. COAI challenged Dual technology policy in the TDSAT. TDSAT has adjourned the case to 09.01.2008. Failing obtaining stay from TDSAT, COAI moved to Delhi High Court on 20.12.2007. The matter was heard on 24.12.2007 and is posted for 3.1.2008 without granting any stay.

In view of above, DoT is proceeding ahead for allotting initial spectrum under dual technology policy to eligible applicants subject to the court order, if any. Application of TATA Telecommunication will also be processed as per the policy and guidelines. An affidavit to this effect will be filled in both TDSAT and Delhi High Court.

3. Issue of New Licences: Although UASL guidelines issued in December 2005 clearly indicates that "Licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a Service Area", DoT sought recommendation of TRAI on number of UAS licences to be issued in a Service Area on 13.4.2007 (prior to taking over by the present Minister). The recommendations of TRAI were received by DoT on 29.08.2007 which suggested that "No Cap be placed on the number of access service providers in any Service Area". This recommendation was accepted by the department on 17.10.2007 in order to encourage more competition in the Telecom Sector and decided to grant new UAS Licences. This is first time that December 2005 UASL guidelines are being implemented in letter and spirit in view of TRAI recommendation.

DOT has been implementing a policy of First-come-First-Served for grant of UAS licences. The same policy is proposed to be implemented in granting licence to existing applicants. However, it may be noted that grant of UAS licence and allotment of Radio Frequency is a three stage process.

1. **Issue of Letter of Intent (LOI):** DoT follows a policy of First-come-First Served for granting LOI to the applicants for UAS licence, which means, an application received first will be processed first and if found eligible will be granted LOI.
2. **Issue of Licence:** The First-come-First Served policy is also applicable for grant of licence on compliance of LOI conditions. Therefore, any applicant who complies with the conditions of LOI first will be granted UAS licence first. This issue never arose in the past as at one point of time only one application was processed and LOI was granted and enough time was given to him for compliance of conditions of LOI. However, since the Government has adopted a policy of "No Cap" on number of UAS Licence, a large number of LOI's are proposed to be issued simultaneously. In these circumstances, an applicant who fulfils the conditions of LOI first will be granted licence first, although several applicants will be issued LOI simultaneously. The same has been concurred by the Solicitor General of India during the discussions.
3. **Grant of Wireless Licence:** The First-come-First Served policy is also applicable for grant of Wireless Licence to the UAS Licensee. Wireless Licence is an independent licence to UAS licence for allotment of Radio Frequency and authorising launching of GSM/CDMA based mobile services. There is a misconception that UAS licence authorises a person to launch mobile service automatically. UAS licence is a licence

for providing both wire and wireless services. Therefore, any UAS licence holder wishes to offer mobile service has to obtain a separate Wireless Licence from DoT. It is clearly indicated in Clauses 43.1 and 43.2 of the UAS Licence agreement of the DoT.

Since the file for issue of LOI to all eligible applicants was approved by me on 2.11.2007, it is proposed to implement the decision without further delay and without any departure from existing guidelines.”

K. Note of the then External Affairs Minister and Chairman, GoM (2006) to the Prime Minister

6.38 As desired by the Prime Minister, Shri Pranab Mukherjee, the then External Affairs Minister and Chairman, Group of Ministers constituted in 2006 for vacation of spectrum *vide* his note dated 26 December, 2007 made his observations on Telecom licences and spectrum issues which read as follows:—

- (i) “The licences and spectrum allocation, presently, is being done under the “Guidelines for United Access Services Licence” notified on 14 December, 2005. Therefore, it is assumed that the “POLICY” which is being referred to in a number of cases before the “Telecom Dispute Settlement Appellate Tribunal” is what is stated in these guidelines of 14 December, 2005.

Para 11 of these guidelines clearly say that “the licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a service area”.

Department of Telecommunications (DoT) may continue to follow this policy till any further changes are made in this regard.

- (ii) Para 38 of these guidelines, *inter-alia*, states that “additional spectrum may be considered for allocation after ensuring optimal and efficient utilisation of the already allocated spectrum, taking into account all types of traffic and guidelines/criteria prescribed from time to time.”

Norms notified in March 2006 by DoT specified for the first time that allocation of spectrum beyond start-up spectrum would be made on reaching certain minimum number of subscribers.

Therefore, any allocation of spectrum post-March 2006 will have to be according to these norms.

- (iii) In August, 2007, Telecom Regulatory Authority of India (TRAI) suggested revised norms which were stringent than the earlier ones. In October, 2007, Telecommunications Engineering Centre (TEC) of DoT has recommended even more stringent norms. A third Committee set up under Additional Secretary (DoT) is taking another look at the norms. No notification post-March, 2006 has been issued so far.

It is clear that the notified norms so far are only those issued in March 2006.

- (iv) While it is the prerogative of the Government to frame, revise and change the policy, it is also the responsibility of the Government to do so in a transparent manner and then follow the stated policy both in letter and spirit. Thus, it is essential for DoT to issue the new norms immediately so that the spectrum allocation is done in a transparent manner. Enforcement of stringent norms may lead to change in the entitlements of existing licence holders and may increase the availability of the spectrum for new licence holders/crossover Lol holders.

- (v) It is also important to take this step in view of the large number of court cases. Even though no stay has been granted to the litigants so far on the assurance given by the Government that the "POLICY" would be followed in the spectrum allocation, it can lead to problems if we do not have a clearly stated policy and norms in this regard.
- (vi) As stated by the Solicitor General in his note, an affidavit has been filed by the Government saying that spectrum would be first allocated to existing operators, then to persons to whom licences were issued in December 2006, and thereafter to the persons to whom LOIs have been issued for cross-over technology. If such an affidavit has already been filed, it closes our options as the matter is subjudice.

Otherwise, in all fairness, the allocation from the available spectrum may be made on the following basis:

- (a) Existing operators
- (b) To those who were issued licences in December 2006 and who were issued LOIs for crossover technology on "first-come-first-served" basis.
- (vii) According to DoT, the grant of licences is "technology neutral" and no further licence fee will be payable by existing licence holders if they ask for more spectrum for crossover. Yet, CDMA operators who want to crossover to GSM technology have been asked to pay another tranche of licence fee which is equivalent to fee paid by new licence holders. This may be termed as "Crossover fee" to distinguish it from licence fee.
- (viii) While under the existing policy, the Government may keep on issuing new licences, the criteria for the grant of licences may be strengthened and put in public domain at the earliest."

L. Note from the then Solicitor General of India for the then Minister of External Affairs and Chairman, Group of Ministers (2006)

6.39 In his deposition made before the Committee, Shri G.E. Vahanvati, the then Solicitor General for India informed the Committee that in the first week of December, 2007 he was asked by the Minister of Communications and Information Technology that they had to brief the External Affairs Minister, who was heading the Group of Ministers (2006) on vacation of spectrum about the issues pending in the TDSAT. He along with the Minister of Communications and Information Technology reportedly met the External Affairs Minister. In the meeting he handed over a note to the External Affairs Minister that dealt with issues pertaining to telecom licences and spectrum. According to Shri Vahanvati the External Affairs Minister went through his note very intently and after that there was no further discussion. The note from the Solicitor General found a mention in the note of the External Affairs Minister dated 26 December, 2007 sent to the Prime Minister. The contents of the note of the Solicitor General are as follows:—

- "I. **Challenge to criteria for additional GSM Spectrum:** The COAI and the three members who are petitioners contend that the existing criteria for allocation of additional GSM Spectrum (March 2006) are adequate and should not be reviewed or made tighter. There is no substance in this contention for the following reasons:
 - (i) The existing criteria are outdated and unrealistic. This can be demonstrated by a simple example. Bharti Airtel in Delhi is providing service to 36 lakh subscribers. Presently it has spectrum of 10 MHz. Under the existing criteria, requirement is

10 lakh subscribers for 10 MHz, 16 lakh subscribers for 12.4 MHz and 21 lakh subscribers for 15 MHz. Clearly Bharti's own figures show how outdated the existing criteria are. Indeed, if Bharti Airtel is servicing 36 lakh customers on 10 MHz spectrum, how can the existing criteria be said to be "rational" or "adequate"?

- (ii) As against this, TRAI recommended revised criteria for Delhi and Mumbai. For 10 MHz spectrum, the minimum subscriber base is 20 lakhs. For 12.4 MHz, it is 30 lakhs. Bharti would be entitled to 15 MHz when it reaches a subscriber base of 50 lakhs.
- (iii) TEC's recommendations are more scientific. For instance, TEC does not group Delhi and Mumbai together. Mumbai norms are stricter and these are obviously justified having regard to the topography of Mumbai.
- (iv) At the instance of cellular operators, the Committee headed by the Additional Secretary has been considering the entire issue. COAI has its nominee on this Committee. Instead of cooperating with the Committee with substantial contentions, some of the cellular operators are resorting to the use of intemperate language to criticize the reports of the technical experts which are no substitute for argument.
- (v) NTP99 made it absolutely clear that Government retains full right to review spectrum utilization from time to time, keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market and other interests of public. This is reflected in the licence contents also.
- (vi) It can be demonstrated that additional spectrum has been given to some of these operators without any rational basis.

II. Crossover technology

- (i) COAI contends that there is a contractual right which limits the entry of new players. There is no substance in this plea. As a matter of fact, this plea was raised in 2001-2003 in relation to the WLL controversy and the TDSAT, by a majority, rejected this contention. The Chairman was in a minority. The COAI filed an SLP in the Supreme Court against the order of the TDSAT which was withdrawn, a fact which is suppressed in the pending petition. On the contrary, Justice Wadhwa's judgment is quoted as if it was a binding opinion of the Tribunal.
- (ii) It can hardly be disputed that the UASL is technology neutral. The requirement for indicating technology arose only when an application was made to the WPC for grant of spectrum because GSM spectrum and CDMA spectrum operate on different bands.
- (iii) This matter has been duly considered by the Regulator. The Regulator has recommended crossover and this recommendation has been accepted by Government. It is a matter of policy taken in larger public interest with a view to increasing competition and benefiting the consumer at large.
- (iv) Hence, the pleas taken by COAI, are not tenable.

III. Manner in which spectrum will be allocated: The contention that applicants for crossover technology will be given preference is not correct. Though the present licence holders (December 2006 category) awaiting initial spectrum are having contractual rights over existing operators and the new applicants, the affidavit filed by the Government says that spectrum will be first allocated to existing operators,

then to persons to whom licences were issued in December 2006, and thereafter to the persons to whom LOIs have been issued for crossover technology. The COAI can have no real grievance in this behalf since their apprehensions have been shown to be ill founded.

- IV. The issue of new telecom licences:** COAI has no legal right or authority to contend that new licences cannot be issued. The NTP (99) broadly categorises service providers as Access Service Providers. The whole basis of this changed on 31 October, 2003 when the UASL system was brought about. Paragraph 11 of the amended guidelines issued on 14 December, 2005 expressly provides that licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services. As a matter of fact, a specific reference was made to TRAI as to whether there should be a cap for the number of licences in any area. TRAI recommended that there should be no cap on the number of service providers for a service area. This has been accepted by the Government. Thus Government is obliged to scrutinize the pending applications and if the applicants are found eligible, to issue licences on a first-come-first-served basis. Once an applicant becomes licensee after complying with the LOI conditions, the applicant then becomes eligible for spectrum as per the WPC guidelines."

M. Policy Directive for Issue of UASL

6.40 In the context of issue of LOIs, Direct (AS-I) submitted a note to DDG (AS) on 7 January, 2008. In his note, he mentioned about eligibility conditions of UAS applicants in terms of paid up equity and networth. It was stated that while examining the issue of LOIs to be given to new applicants, LF Wing had indicated that the requirement of paid-up equity capital which is a sum total of individual requirement for each service area i.e. Rs. 138 crores for all 22 service areas. Whereas eligibility requirement (i.e. an applicant company, which meets the minimum requirement of paid-up equity for a service area of one category, may apply for any number of service areas of that or lower category) which was stipulated for grant of initial UAS licence is considered, the maximum paid up equity capital requirement would be Rs. 10 crores. In this context, a decision dated 24 November, 2003 taken by the then Minister of Communications and Information Technology was quoted which *inter-alia* read: "the requirement of eligibility condition for grant of UASL viz., networth, paid-up equity capital, experience foreign equity cap has been taken same as for the 4th Cellular Operator". Quoting relevant provisions contained in the Guidelines dated 14 December, 2005 for UASL, it was mentioned in the note "it is implied that the provision which was followed for grant of 4th Cellular Licences and continued during the migration from CMTS/Basic to UASL for requirement of paid-up equity shall be followed for grant of new UASL also". A decision was sought through this note whether the earlier stipulation of paid-up equity under 4th CMS Licensees be followed or consider the requirement mentioned by LF Wing in the case under examination. Explaining the procedure followed till then deciding the eligibility of applicants the note, *inter-alia* stated: "While dealing with applications for grant of UAS licences till March, 2007, the following methodology was adopted. On receipt of application for grant of UAS licence, the same was examined according to a checklist, which was based on eligibility criteria mentioned above. If some discrepancies were found or some information/document were required for consideration of the case, the applicant company was asked to furnish the information /document and/or comply with the requirements of the applications on more than one occasion till they complied with the eligibility conditons. In some cases, sufficient time were even allowed to the applicant company for obtaining statutory approvals, viz., FIPB approval, etc.

The processing of the subsequent applications in same service area was kept on hold till the requirement is met by the applicant company, who was first in the queue. In many cases, the applicant company met the eligibility criteria after the date of application, such cases were

also considered for grant of UAS licences. Thus, (except the applications of M/s. BSNL for Mumbai and Delhi and the application of M/s. Aditya Birla Telecom Limited for Mumbai service area, which were not eligible on account of substantial equity clause) none of the applications for grant of UAS licence has been rejected till date on grounds of incomplete application or non-completion of requirements of application. The sequence of granting LOI/ UAS licence has been maintained till now according to date of respective application for a particular service area... It is once again mentioned that as per the existing methodology, the eligibility of the applicant company has been considered till the last correspondence received from the licensee company before issue of LOI for signing of the licence agreement. In some cases, the applicant company has also been permitted additional time to fulfil the requirement of LOI on their request beyond stipulated period mentioned in the LOI." "A decision was sought through this note whether in the case for processing of application received upto 25 September, 2007, the eligibility on the date of application should be taken into account or it might be a subsequent date also.

6.41 Acting on the note from Director (AS-I), DDG (AS) in his note dated 7 January, 2008 indicated that the stipulations for eligibility of an applicant in terms of paid-up equity capital be followed as was followed during the migration of CMTS/Basic licence to UASL and subsequently new UASL were also granted based on those stipulations. Accordingly, he suggested that the Department may consider an applicant as eligible who have paid-up equity of 10 crore or more for all service areas. In the context of procedure hereto followed for grant of LOIs to UASL applicants, DDG (AS) observed that there used to be small number of pending applications and the procedure being followed by DoT was not in conflict with the interest of others. He mentioned that the procedure be perused in the unprecedented situation wherein 575 UASL applications had been received subsequent to the recommendations of TRAI of no capping on UASL in a service area. He referred to the decision already taken by the Minister of Communications and Information Technology to grant LOIs to eligible applicants who submitted their applications upto 25 September, 2007. There were large number of applicants whose eligibility was to be established and cases were to be processed. He mentioned that the Minister of Communications and Information Technology took a decision that eligibility on the date of application was to be considered for examining the cases. Therefore, the Department may check eligibility on the date of application for the grant of LOIs and subsequent eligibility may not be considered. He then suggested that the LOIs shall be simultaneously issued in respect to all UASL applications received upto 25 September, 2007 subject to fulfilment of eligibility as on date of applications. DDG (AS) then recorded in the same note that the policy of the Department of Telecommunications as decided by the Minister of Communications and Information Technology and communicated to the Prime Minister *vide* letter dated 26 December, 2007 shall be treated as policy directive for licensing matters, which read as follows:—

"Issue of Licence: The first-come-first-served policy is also applicable for grant of licence on compliance of LOI conditions. Therefore, any applicant who complies with the conditions of LOI first will be granted UAS licence first. This issue never arose in the past as at one point of time only one application was processed and LOI was granted and enough time was given to him for compliance of conditions of LOIs. However, since the Government has adopted a policy of 'No Cap' on number of UAS licence, a large number of LOIs are proposed to be issued simultaneously. In these circumstances, an applicant who fulfils the conditons first will be granted licence first, although several applicants will be issued LOI simultaneously. The same has been concurred by the Solicitor General of India during the discussions."

"Grant of Wireless Licence: The first-come-first-served policy is also applicable for grant of Wireless Licence to the UAS licensee. Wireless licence is an independent licence to UAS licence for allotment of Radio Frequency and authorising launching of GSM/CDMA based

mobile services. There is a misconception that UAS licence authorises a person to launch mobile services automatically. UAS licence is a licence for providing both wire and wireless services. Therefore, any UAS licence holder wishes to offer mobile service has to obtain a separate Wireless Licence from DoT. It is clearly indicated in clauses 43.1 and 43.2 of the UAS licence agreement of the DoT".

6.42 The file was then marked to Member (Finance) who directed Advisor (Finance) to examine the proposal. On the question of paid-up equity capital Advisor (Finance) in his note dated 7 January, 2008 reiterated the stance that in all service area licence equity capital required was 138 crores and not 10 crores as per UASL Guidelines dated 14 December, 2005. Member (Finance) was in agreement to the point made by Advisor (Finance).

6.43 The file was then marked to Secretary, Department of Telecommunications who, agreed with the revision made by the Finance Wing in respect of paid-up equity capital requirement for UASL in Service Areas. Member (T) also concurred in the decision of the Secretary, Department of Telecommunications on the issue of paid-up equity capital. A press release was also put up in the file. The file was then put up to the Minister of Communications and Information Technology on the same day seeking approval to the proposals. On 7 January, 2008 the Minister of Communications and Information Technology recorded in the same note: "approved: pl. obtain Solicitor General's opinion since he is appearing before the TDSAT and High Court, Delhi. Press release approved as amended". The file was then submitted to the Solicitor General who, on 7 January, 2008 recorded: "I have seen the notes. The issue regarding new LOIs are not before any court. What is proposed is fair and reasonable. The press release makes for transparency. This seems to be in order."

M. Press Release dated 10 January, 2008

6.44 On 10 January, 2008, the Department of Telecommunications issued a press note on its website and the website public information bureau at about 1.47 pm notifying that the Department had decided to issue LOI to all applicants eligible on the date of application, who applied upto 25 September, 2007. It further notified as follows:

"UAS licence authorises licensee to rollout telecom access services using any digital technology which includes wire-line and/or wireless (GSM and/or CDMA) services. They can also provide Internet Telephony, Internet Services and Broadband services. UAS licence in broader terms is an umbrella licence and does not automatically authorize UAS licensees usage of spectrum to rollout Mobile (GSM and/or CDMA) services. For this, UAS licensee has to obtain another licence, i.e. Wireless Operating Licence which is granted on first-come-first-served basis subject to availability of spectrum in particular service area.

DoT has been implementing a policy of First-come-First-Served for grant of UAS licences under which initially an application which is received first will be processed first and thereafter if found eligible will be granted LOI and then who so ever complies with the conditions of LOI first will be granted UAS licence".

6.45 The Committee find from the records that after the above press note was released, Shri Siddharth Behura, the then Secretary, Department of Telecommunications in his noting dated 10 January, 2008 minuted the exact amendment effected in the 'draft press release' by the Minister of Communications and Information Technology. He recorded as follows: 'the amendment involves deletion of the last paragraph, i.e. "However if more than one applicant complies with LOI condition on the same date, the inter-se seniority would be decided by the date of application". In so amending, Hon'ble MOC&IT has minuted "'X' is not necessary as it is, or new stipulation". (Copy of amended Press Release is at **Annexure-26**).

6.46 At the instance of the Committee, the Central Bureau of Investigation had submitted a status report about the investigation being conducted by them into the irregularities in the 2G Spectrum case. The Committee's attention was drawn to certain alteration made in the documents of the Department of Telecommunications in regard to approval accorded to the draft press release on 7 January, 2008 by the Minister of Communications and Information Technology. In this regard, the Committee sent for written clarification from the Investigative Agency. The Central Bureau of Investigation in the written reply stated that on 7 January, 2008 Shri Siddharth Behura, the then Secretary, Department of Telecommunications submitted a draft press release for approval of the Minister of Communications and Information Technology along with other proposals submitted by the Department. Investigation by the Central Bureau of Investigation revealed that the Minister of Communications and Information Technology approved the draft press release and asked the Secretary to obtain Solicitor General's opinion since he was appearing before the TDSAT and High Court, Delhi. According to the Central Bureau of Investigation, the Secretary took the file himself to the Solicitor General who advised "I have seen the matter. The issues regarding new LOIs are not before any court. What is proposed is fair and reasonable. The press release makes for transparency. This seems to be in order". The Investigative Agency further stated that the Minister of Communications and Information Technology in conspiracy with the then Secretary, Department of Telecommunications struck out the last paragraph of the draft press release which mentioned "However if more than one applicant complies with LOI condition on the same date, the *inter-se* seniority would be decided by the date of application". It was further stated by the Central Bureau of Investigation that when the Minister of Communications and Information Technology struck out last para of draft press release, at the same time he also inserted, in his aforementioned note dated 7 January, 2008, the words "press release appd. (sic.) as amended". According to the Central Bureau of Investigation this insertion in his note was willfully done by the Minister of Communications and Information Technology after the then Solicitor General had already recorded his note dated 7 January, 2008 after his note, on the running note sheet. In evidence before the Committee, the representatives of the Central Bureau of Investigation stated that they have forensic evidence available with them saying that the note dated 7 January, 2008 had been forged. The Central Bureau of Investigation further stated in evidence: "The lines then inserted run over his signature which *prima facie*, show that this is a later inclusion."

6.47 In evidence, the Committee desired to know from the former Solicitor General for India whether he agreed for the amendment in the press release. Shri G.E. Vahanvati the then Solicitor General for India stated:

"I had never seen the amended press release. I had never seen the deletion of the last paragraph. I had given a statement in this behalf to the CBI. I stand by the statement..." Shri G.E. Vahanvati further clarified: "The file noting is also very interesting because first of all, if you see the noting, he says, 'approved'. 'Approved' which he is referring to is to the Press Release without any correction. Thereafter under the same noting, it has been written 'Amended Press Release approved' and according to the CBI — because I have not seen the original — what has been written below that is in a different pen and a different ink. Even the change which has been made in the Press Release, the exclusion and the noting over there is in the same pen and a different ink. I had not seen that. I saw the original noting which said 'approved'. But I had not seen the change over the Amended Press Release which was 'approved' because nobody suggested that even that was to be shown to me."

Shri G.E. Vahanvati further stated: "Much later, it was during the hearing of the licence cancellation proceedings in the Supreme Court when the entire record came from the Shivraj Patil Committee that I saw the draft (Press Release) with a cancellation. I realised

that I had not seen the cancellation of the last paragraph. In fact, I had not seen the document at all. The CBI came and asked me to give a statement. I gave a statement. On that statement, I have been requested by the Court to give evidence in the matter on 27 February of this month. So, as far as I am concerned, I wish to make it clear that I was appearing as a law officer in the proceedings. I was not concerned with policy decisions. It is completely beyond my domain. Even if we were asked to give any opinion, it is purely on factual matters or on legal issues. I was not involved in any of the decisions which had been taken."

6.48 The Committee sent for written reply from Shri A. Raja, MP and former Minister of Communications and Information Technology in respect of issues related to amended draft press release. The Committee specifically desired to know when was the sentence "press release appd. as amended" recorded by the former Minister on the file." The Committee also queried, was the press release amended and the sentence added in the file prior to sending the file to the then Solicitor General or after it was received back from him. In his written reply, the former Minister stated:

"After I had recorded my approval to the note put up by the Department of Telecommunications officials and directed them to take the opinion of the solicitor General, my attention was drawn to the fact that the last paragraph of the draft Press Release was not in conformity with what had been approved on the file (and previously communicated to the Hon'ble Prime Minister). It would in fact create a totally new method of grant of licences. I therefore deleted the last paragraph, recorded that it was a new stipulation and also recorded in the file that the Press Release was being approved "as amended" (by me), and only then was the file marked to the Secretary (T) for showing it to the Solicitor General. I wish to emphasise that my note was written prior to the file being sent to the Solicitor General, and nothing was inserted after the file came back from him."

On the question of use of different pens/ink while minuting on the file which has been termed as forgery by the Central Bureau of Investigation, Shri A. Raja, MP clarified as follows:

"As anyone who would have dealt with Governmental files would know, at any given time there are a number of pens kept on the Minister's desk, and it is purely a matter of chance as to which one he happens to pick up. To make such a major claim of forgery/fabrication based on this fact is just without any understanding of law or practice. The fact of the matter is that the entire note was written before the file was marked to the Secretary (T), who in turn marked the file to the SG."

6.49 Having said that the said sentence in the note dated 7 January, 2008 was added and the press release amended prior to forwarding the file to the then Solicitor General, the Committee then sought the response from the former Minister to the view expressed by the then Solicitor General before the Committee as well as the charges framed against him in the matter. Shri A. Raja, MP in his written reply stated as follows:

"Insofar as the view expressed by the then Solicitor General before the JPC are concerned, I am sorry to say that he has been somewhat economical with the truth. It is worthwhile to note that the Solicitor General, in his initial statement to the CBI, did not even tell them about the meetings that took place in December, 2007. He admitted to this meeting only after his note to the EAM emerged into the public domain. Even then, he did not admit that the meeting was a tripartite one between the EAM, himself and me — but this has been made clear by the EAM in his letter to the PAC. The Solicitor General has

also conveniently omitted to mention that last paragraph, in various litigations in 2008 and 2009 in the TDSAT, High Court and Supreme Court, and never once mentioned anywhere that this Press Release was different to what had been seen by him. On the contrary, he in fact defended the amended Press Release. The entire actions of the DoT were based on the discussions with him. For him to now turn around and claim ignorance is truly shocking.

It would not be proper for me to comment on the CBI chargesheet in this forum. Suffice to say that I am confident of establishing my *bona fides* before the competent court."

6.50 On the same day, i.e. 10 January, 2008, second press release was issued by the Department of Telecommunications at their website only at about 2.45 pm, the context of which are as follows:

"Sub: UASL applicants to depute their authorised representative to collect responses of DoT on 10.1.2008.

The applicant companies who have submitted application to DoT for grant of UAS licences in various service areas on or before 25 September, 2007 are requested to depute their Authorised signatory/Company Secretary/authorised representative with authority letter to collect response (s) of DoT. They are requested to bring the company's rubber stamp for receiving these documents to collect letters from DoT in response to their UASL applications. Only one representative of the Company/group Company will be allowed. Similarly, the companies who have applied for usage of dual technology spectrum are also requested to collect the DoT's response.

All above are requested to assemble at 3.30 pm on 10 January, 2008 at Committee Room, 2nd Floor, Sanchar Bhawan, New Delhi. The companies which fail to report before 4.30 P.M. on 10 January, 2008, the responses of DoT will be dispatched by post.

All eligible LOI holders for UASL may submit compliance to DoT to the terms of LOIs within the prescribed period during the office hours i.e. 9.00 AM to 5.30 PM on working days."

6.51 The Committee note that even though the decision to advance the cut-off date for receiving UASL applications was taken by the Department of Telecommunications on 2 November, 2007, a press release to this effect was issued only on 10 January, 2008. In this context, in evidence, the Committee specifically desired to know from the former Secretary as to why this decision was not put out in the public domain at the earliest, as was done on 25 September, 2007 following a decision taken on 24 September, 2007 about fixing a cut-off date. In response, Shri Siddharth Behura, former Secretary submitted:

"It could have been notified earlier. The fact that it was not notified earlier, the sooner the better. Since a decision had been taken on the 2 November, 2007 to have it on 25 September, 2007 and then it was reiterated on 4 December, 2007, so they should have, in fact, done a notification, if they have not done it. If one does it as early as possible, it should not be done later as you should do it as soon as the decision is taken if there is any delay."

N. Distribution of LOIs for New UASL

6.52 As per records [File No. 20-100/2007-AS-I (Pt. C)] made available to the Committee, 232 UASL applications received upto 25 September, 2007 from 22 different companies (out of which 8 are from Unitech Group and 2 are from Swan Group) were processed. 16 eligible

applicant companies were to be issued 121 LOIs in total whereas 6 applicant companies had to be issued response of the Department of Telecommunications. Response to M/s Tata Teleservices was to be issued to the companies for in-principle approval for usage of Dual Technology. On 10 January, 2008 4 special counters were set up in reception area at Ground Floor of Sanchar Bhawan for issue of LOIs/response of the Department of Telecommunications to various applicant companies/Group of Companies simultaneously. As per the announcement made in the press release, all the eligible applicants who applied till 25 September, 2007, assembled at 3.30 PM on 10 January, 2008 at Committee Room, Sanchar Bhawan, New Delhi. On the same day, 121 LOIs/response of the Department of Telecommunications were issued simultaneously on First-Come-First-Served basis to the eligible applicants through the 4 counters. Most of the compliances were received on 10 January, 2008 itself and the difference in receipt of compliances were of the order of few minutes. Compliances from 2 companies were received on 11 January, 2008.

6.53 The Department of Telecommunications in a written note stated that while issuing UAS licences, the Department only checks whether the requisite amount of entry fee in the form of Demand Draft/Pay Order from a Scheduled Bank and requisite amount of Performance Bank Guarantee and Financial Bank Guarantee from a Scheduled Bank or Public Financial Institution duly authorised to issue such Bank Guarantee, have been deposited by the applicant and does not look into the financial arrangements made by the applicants.

6.54 During the evidence, Shri Siddharth Behura, the then Secretary, Department of Telecommunications was asked to clarify the haste shown by the Department while giving so less time to the applicants in the press release for collecting the responses and compliance to the LOI conditions. The former Secretary stated: "there is nothing in writing as such what is a Governmental procedure whether this time is short or long." He further stated that "You can call it unusual. Normally, I would consider it unusual".

O. Issuance of UAS Licences

6.55 In all, 120 UAS Licences were issued between February and March, 2008. 2 more LOIs were issued in July, 2008 and these UAS Licences was signed in August, 2008. A statement showing name of the Licensee Company, service area and effective date of licence is enclosed at **Annexure-27**. Spectrum was allotted to these licensees from April 2008 to May 2009.

P. Developments Post-Issuance of UAS Licences

6.56 From the records made available to the Committee, it is seen that on 31 December, 2007 Shri Pulok Chatterjee, the then Secretary in the Prime Minister's Office submitted a note to the Prime Minister dealing with spectrum related issues. Records indicate that subsequent to receipt of the note dated 26 December, 2007 from the then External Affairs Minister and the letter dated 26 December, 2007 from the Minister of Communications and Information Technology, the note was initiated on the direction of the Prime Minister. After discussing further with the Principal Secretary to the Prime Minister, Shri Pulok Chatterjee on 6 January, 2008 submitted a comprehensive note suggesting certain norms and the methodology to be adopted by the Department of Telecommunications in dealing with spectrum related issues. He had reportedly discussed the matter with the then Secretary, Department of Telecommunications. In the note, he suggested that the outlines of the methodology proposed in his note may be forwarded to the Department of Telecommunications for consideration. Taking note of the fact that LOIs were issued by the Department of Telecommunications on 10 January, 2008, the Prime Minister on 11 January, 2008 desired that the development might be taken into account and the issues accordingly modified and submitted to him. On 15 January, 2008, Shri Pulok Chatterjee submitted a note touching upon the issues relating to issue of LOIs by the Department of Telecommunications

and reiterated his suggestions made on 6 January, 2008. Noting in Prime Minister's Office file dated 23 January, 2008 indicated "PM wants this informally shared with the Deptt. does not want a formal communication & wants PMO to be at arms length pl." Then the matter was informally shared with the Secretary, Department of Telecommunications on 25 January, 2008.

6.57 On 15 January, 2008, the then Finance Minister forwarded a note on spectrum charges to the Prime Minister. This note was based on a comprehensive note along with a concept paper of the then Additional Secretary (Economic Affairs) submitted to the Finance Minister on 9 January, 2008. The note *inter-alia* contained:

"...This note does not deal with the need, if any, to revise entry fee or the rate of revenue share. This note deals with spectrum charges for 2G spectrum.

Spectrum is a scarce resource. The price for spectrum should be based on its scarcity value and efficiency of usage. The most transparent method of allocating spectrum would be through auction. The method of auction will face the least legal challenge. If Government is able to provide sufficient information on availability of spectrum, that would minimize the risks and, consequently, fetch better prices at the auction. The design of the auction should include a reserve price.

The auction could be for a "one-time payment" for the additional spectrum or "an annual rent" for the additional spectrum. Once the price is discovered, additional spectrum should be allocated to all bidders at that price.

In addition, if a licensee sells his licence (including the spectrum) to another person, it could be stipulated that the licensee should share with the Government a part of the premium/profit gained by him through the sale.

This leaves the question about licensees who already hold spectrum over and above the start up spectrum. In such cases, the past may be treated as a closed chapter and the payments made in the past for additional spectrum (over and above the start-up spectrum) may be treated as the charges for spectrum for that period. However, prospectively, such licensee should pay for the additional spectrum that he holds, over and above the start-up spectrum, at the price discovered in the auction. This will place old licensees, existing licensee seeking additional spectrum and new licensees on par so far as spectrum charges are concerned."

6.58 The Committee have been informed that a meeting was held between the Finance Minister and the Minister of Communications and Information Technology on 30 January, 2008. The gist of discussion of the meeting as recorded by the Finance Secretary on 30 January, 2008 *inter-alia* read as follows:

"...FM suggested that keeping in view lessons of experience, allotment of licences and allocation of spectrum must be based on solid legal ground.

It was agreed that the optimum number of operators per circle would be about seven. The international norm is about six. If there are more licensees per circle, it is possible that consolidation will take place. Government should ensure that such consolidation happens in a healthy way without any rent-seeking.

It was noted that there is a mismatch in the demand and supply of spectrum across circles. Redressing this mismatch will be another policy imperative.

FM said that for now we are not seeking to revisit the current regimes for entry fee or for revenue share.

The issue under consideration now is the regime for allocation of spectrum. The following aspects need to be studied further:

- (i) The rules governing the allocation of additional spectrum and the charges thereof, including the charges to be levied for existing operators who have more than their entitled spectrum.
- (ii) Rules governing trade in spectrum. In particular, how can Government get a share of the premium in the trade?
- (iii) The estimate of the additional spectrum that may be available for allocation after taking into account: (a) the entitlement of entry spectrum of fresh licences; (b) the spectrum that needs to be withdrawn from existing operators who do not have the subscriber base corresponding to the spectrum allotted to them; and (c) the spectrum that may be released by Defence.
- (iv) We also need to check the current rules and regulations governing withdrawal of spectrum in the event of: (a) not rolling over; (b) merger and acquisition; and (c) trading away spectrum”.

6.59 The Department of Economic Affairs in a written note stated that further meetings were held between the then Finance Minister and the Minister of Communications and Information Technology on 29 May, 2008 and 12 June, 2008. Subsequently, in a meeting held under the Chair of the Prime Minister on 4 July, 2008, the consolidated position on spectrum issues between the Finance Minister and the Minister of Communications and Information Technology, as mentioned below with the Prime Minister:

“Enhancement of spectrum usage charges by 1% of AGR;

Updating the embedded price of spectrum (Rs. 266 crore/MHz — for Pan India operation for GSM operators) using SBI PLR, compounded on a monthly basis, from the date of allotment of additional spectrum beyond 6.2 MHz, upto March 31, 2008, for the purpose of determining the amount payable by existing operators as on March 31, 2008. The indexing factor works out to 1.52 and represents the time value of the price of spectrum for the duration over which it remained unrecovered from the operators. For new operators, who are allotted spectrum beyond 6.2 MHz after March 31, 2008, the putative spectrum price as on March 31, 2008 would be updated to the date of allotment using the same methodology of compounding the SBI PLR on a monthly basis.”

Q. Issue of UAS Licences to Ineligible Applicants

6.60 The Report of the Comptroller and Auditor General of India (No. 10 of 2010-11) regarding issue of licences and allocation of 2G spectrum mentioned that as many as 85 licences out of the 122 new licences issued to 13 companies in 2008 were granted to those companies which did not satisfy the eligibility conditions prescribed by the Department of Telecommunications. In this context, the Committee obtained a status report from the Department of Telecommunications. In their status report it has been stated UAS licences are granted in terms of the UAS Guidelines dated 14 December, 2005 and based on the information/documents/certificates submitted by the applicant companies duly certified by their Company Secretary as mentioned in the Guidelines/Application Form. As a matter of abundant precaution, the Department of Telecommunications also takes an undertaking from the applicant company that “If at any time, any averments made or information furnished for obtaining the licence was found incorrect, then their application and the licence if granted thereto on the basis of such application, shall

be cancelled". If any misrepresentation of facts is brought to notice at a later date necessary action can be taken as per due procedure under the provisions of the UAS licence Guidelines/ agreement. As per the status report, in respect of 85 out of 122 UAS licences granted in 2008, the Report of C&AG pointed out that there are certain companies who did not meet eligibility criteria due to non-existence of 'telecom business/activities' in their main object clause of the Memorandum of Association (MoA) of the company as well as insufficient authorised share capital in the MAA of the company on the date of their respective application for grant of UAS licences. The Report of the Comptroller and Auditor General of India further stated that these companies suppressed facts, disclosed incomplete information and submitted fictitious documents to the Department of Telecommunications and thus used fraudulent means for getting UAS licences.

6.61 Regarding action taken against the said companies, the status report mentioned that based on the Report of the Comptroller and Auditor General of India and the legal opinion of the Ministry of Law and Justice dated 14 December, 2010, the Department of Telecommunications issued show cause notices for termination of all the 85 UAS licences mentioned in the said Report of the Comptroller and Auditor General of India. All the 13 companies had submitted their replies on 10-11 February, 2011 and the same were under examination of the Department of Telecommunications.

6.62 The Committee asked Shri Siddharth Behura, the then Secretary, the Department of Telecommunications about the steps taken to verify the credentials of applicant companies before issue of licences. The former Secretary, in evidence, submitted:

"We had the December, 2005 guidelines which prescribes the eligibility conditions for grant of a licence. The procedure that is followed in the Department is that after the applications are received they are sent to the Access Services Cell which is headed by the Deputy Director General of the rank of the Joint Secretary and he has four Directors in his Department. These applications are sent to the Access Services Cell. They are examined in that Cell in consultation with two other Cells, Investment Promotion Cell and the Licensing Finance Division of the Finance wing. These are the two divisions and if necessary the Legal Cell is also there. These are the three divisions which are consulted by the AS Division. The AS division is fully empowered and authorized to examine the details of the applicants, like the eligibility of the applications against the background of the conditions given in the guidelines. The point is that there is no formal enquiry which is done on these applications. If there is any doubt or any clarification, it is taken from the applicants. It is based practically on self-certification. On self-certification, there is a Company Secretary who certifies that everything is correct and all that. So, applications are taken and examined on the basis of self-certification and if there are clarifications or enquiries to be taken, letters are written to the company and they send the clarifications. Based on the clarifications, they are again consulted within the Department and other Cells, and once AS Division is satisfied that the case is now ripe for a decision either for eligibility or for ineligibility, they put it up to the Member-Technology and Member-Finance and to the Secretary and to the Minister for approval of either rejection or acceptance."

6.63 Further, through a written submission to the Committee, Shri Siddharth Behura, the then Secretary, Department of Telecommunications informed that the Central Bureau of Investigation (CBI) in their investigation have examined this issue of eligibility of applicants and according to their chargesheets they have to come to the conclusion that the three applicants (57 licences) were ineligible (Unitech—22 licences, Swan—13 Licences, Loop—22 licences). He further submitted that the applicants concealed the facts and according to CBI, the Department of Telecommunications officials are not responsible in the matter.

R. Non-fulfilment of the Roll-Out Obligation by the New Telecom Licensees

6.64 As per the UAS licence Clause 34 (as amended), the licensee is required to cover at least 90 per cent of the area in the Metro Service Areas of Delhi, Mumbai, Kolkata and Chennai within one year of allocation of start-up spectrum. As regards the non-Metro Service Areas, it is required to cover 10 per cent of the District Headquarters (or towns in lieu thereof) in the first year and 50 per cent of District Headquarters within three years of allocation of start-up spectrum. It is mentioned in the terms and conditions of the licence agreement that the licence may be terminated for delay of more than 52 weeks.

6.65 In response to a query of the Committee regarding status of compliance to the roll out obligations by the service providers who got licences in January, 2008, the Department of Telecommunications in a written reply submitted that many of the licensees against whom the Liquidated Damages had been imposed, had filed petitions in the TDSAT and the same were under adjudication. Show-cause notices for termination of licences due to violation of roll out obligations were issued to 15 licensees and for 3 more licensees were under examination from legal point of view as the matter relates to amalgamation of M/s Spice Communications Limited with M/s Idea Cellular Limited, which is sub-judice in the Delhi High Court and would be issued after approval of the competent authority. The replies of show-cause notices received were reportedly under examination.

6.66 In response to a query with regard to regular monitoring of the performance of the licensees in meeting the roll out obligations, Shri P.J. Thomas, the then Secretary, the Department of Telecommunications in evidence stated: "there was a regular review which the Department officials were also doing and we were reviewing the regulation of the roll out of spectrum".

6.67 When asked about the findings of such reviews the then Secretary stated:

"There were many things emerging out of that. When the licences were issued, we had discussions with the operators two-three times. Apart from whatever conditions of licences were there, new conditions had to be insisted by the Department. Sometimes in August or September — month may be incorrect — the Department of Telecommunications had insisted that the legal interception and monitoring conditions had to be imposed before the roll out was coming. Subsequently, in November the security clearance of equipment was introduced as an additional condition. These two additional conditions were definitely delaying the roll out of the services by them. These operators were themselves applying for clearance for the equipment which they were importing from various countries. All this was being thoroughly discussed and the Home Ministry which was monitoring the legal interception part and also the equipment clearance part were also giving various proforma and clearances and all that. This procedure was going on and therefore there was a lot of delay in the implementation of the roll out of the services."

6.68 Shri Thomas further informed that "the Department was reviewing the implementation; the roll out was being reviewed. In the review of roll out these three conditions which came as extraordinary from the Home Department and from the security agencies were being discussed with them and therefore subsequently that was being settled. Therefore, an essential delay in the roll out was there. The Department at that time was following the TRAI recommendations which had come sometime in 2007. The recommendations said that the licences should not be cancelled, the unitary punitive measures for delay in roll out would be performance guarantee being taken away or forfeited and then they would not be eligible to participate in the future options or further spectrum allocation should be denied. This was the view during the time, of course, the review was being conducted regularly and pressure was definitely being put for roll out. If I remember correctly, there was also a Committee to work out what were the damages to be collected from the various companies because of the delay in roll out. All this was done during my tenure."

6.69 When asked to clarify whether the delay in rolling out of services by the licensees was in any way violation of the terms and conditions of the licence agreement, the then Secretary stated:

"It cannot be a violation in the sense that if the Department of Telecommunications itself provides a stipulation, which the operator has to meet, then it is not a violation. Secondly, the Department of Telecommunications brought in this specification on the inputs of the Home Ministry and the intelligence agencies because all security concerns had to be addressed. This was the view taken at that time."

6.70 The Telecom Regulatory Authority of India (TRAI) *vide* their letter dated 18 November, 2010 informed the Department of Telecommunications that in pursuance of section 11 (1) (b) (i) of the TRAI Act 1997 (as amended), the Authority has sought compliance of licence terms and conditions pertaining to roll out obligations, from all service providers who have been issued licences from December, 2006 onwards. TRAI, after analyzing the reports submitted by the licensees, observed that while some licensees had complied with the roll out obligations, there are those who had not complied with the roll out obligations at all. Most licensees had complied with the roll out obligations but with delay (including delay beyond 52 weeks from the due date for compliance). Even among those reported to have complied with the obligations, it is seen that in several cases, the licensees have either not started the service or the number of BTS/subscribers is negligible. The very purpose of mandating the roll out obligation is to ensure that the licence and the spectrum given thereunder is effectively utilized to provide service to the public. The position of these licences is such that neither the spectrum assigned to them is effectively utilized for common good nor is the expected revenue to the exchequer.

6.71 TRAI after considering all the reports submitted by the service providers came to the conclusion that the licence terms and conditions need to be strictly complied with and, therefore, the licensees who had not met the stipulated criteria for roll out obligations and the time limit of 52 weeks had already lapsed, the licences might be cancelled but in the cases where the time limit had not crossed 52 weeks, Liquidated Damages might be imposed on them.

6.72 The Department of Telecommunications after receiving the suggestions of TRAI, examined the entire issue and after getting it legally vetted, referred the matter back to TRAI for reconsideration of their recommendations. Thereafter, TRAI again analysed the issue and came to same conclusions as forwarded earlier.

CHAPTER VII

ASSESSMENT OF FINANCIAL IMPACT ON ACCOUNT OF ISSUE OF LICENCES AND SPECTRUM

A. Calculation of Financial Impact In the C&AG Report

7.1 The C&AG in the Performance Audit Report on the "Issue of Licences and Allocation of 2G Spectrum", has pointed out that the entry fee charged for Pan-India UAS Licence in 2008 was fixed Rs. 1658 crore which was discovered in 2001. In the Audit Report it has been further brought out that the 2001 price did not reflect the true economic value of a licence and the spectrum bundled with it in the year 2008. While trying to arrive at the value of spectrum which was allotted to 122 licensees in 2008, the C&AG came to the conclusion that any loss ascertained while attempting to value the spectrum in hindsight could only be 'presumptive'. Accordingly, the Audit took into account the various indicators to assess possible (presumptive) value, from the records available to Audit rather than going for any mathematical/econometric models. The Audit has assessed the presumptive loss based on the following three indicators:-

- (i) **Under pricing of 2G and Consequent Loss:** S Tel, a company which had applied for UAS licence in 2007, had offered to pay additional revenue share of Rs. 6000 crore to the Department of Telecommunications for a Pan-India licence over and above the spectrum charge/revenue share payable as per existing policy. The company enhanced its earlier offer to Rs. 13,752 crore over a period of ten years for allotment of 6.2 MHz GSM spectrum. The company further agreed to increase the bid price in the event of any counter bid or auction of spectrum for GSM on a Pan-India basis.
- (ii) **Value based on prices discovered for 3G Spectrum:** The Audit Report drew parallels between 2G and 3G spectrum, since TRAI in its report of 2010 had observed that 2G services currently are actually offering 2.75G services. Therefore, "while comparing spectral efficiency and other factors, it is fair to compare existing 2.75G systems with 3G systems". The Audit felt that loss could also be indicated, if price is calculated at 3G rates which can also be taken as one of the indicators for assessing value of 2G Spectrum allocated to UAS Licences in 2008.
- (iii) **Sale of equity by UAS licensee firms at higher value:** Swan Telecom, S Tel and Unitech were new entrants in the telecom sector. The fact that these operators could draw huge foreign investments, even before establishing a foothold in the Indian telecom market would suggest that acquiring UASL and with it, allotment of 4.4. MHz of GSM spectrum for roll out, was the main factor which attracted the foreign investment.

7.2 Based on the above indicators the loss to the Government on account of the grant of new UAS licences and 2G spectrum during the period 2007-2010 has been calculated to fall in the following range:-

Category	Criteria for working out potential loss to exchequer (value in Rs. in crores)			
	S Tel Rate	Rates on the basis of 3G auction	Sale of equity by the new licensees	
			Unitech	Swan
New Licences	38950	102498	40442	33230
Dual Technology	14573	37154	15132	12433
Beyond contracted quantity of 6.2 MHz	13841	36993	14052	12003
Total	67364	176645	69626	57666

7.3 The C&AG Report has clarified that the offer made by S Tel is only an indicator of the market presumption of the value of the 2G spectrum which could have accrued to the Government if the Department of Telecommunications had resorted to a bidding/auction process for allocation of 2G spectrum in 2008. With regard to second indicator also, the Audit clarified that specific volume of 2G spectrum could have been discovered only through an efficient market drawn process and in its absence, these are the indicators available which give the hints towards the loss Government could have suffered. Even while providing the third indicator, the Audit clarified that the examples of Swan Telecom and Unitech were the attempt only to highlight that the price discovery of spectrum through a market mechanism would have fetched a much higher value and thus increased receipts for Government.

7.4 On 31 May, 2010 while forwarding the Audit Report to the Director General (RC), the Director General of Audit, Post & Telecommunications stated in the forwarding letter as follows:

"Loss to Government due to the decision not to auction 2G spectrum has not been quantified in the draft report. But, based on the voluntary offer from an operator for a Pan-India licence, the impact of non-revision of the price for 2G spectrum would work out to Rs. 65,725 crore. This is not included in the draft report because the operator withdrew their offer in Delhi High Court. If 2G rates are to be pegged to the rates discovered through auction for 3G spectrum in May 2010, the impact would be Rs. 1,02,497 crore considering the price for 6.2 MHz of spectrum as base. However, charging for 2G spectrum for roll out was never recommended by TRAI or the Government has never contemplated any charges for the spectrum other than entry fee."

7.5 In the Report prepared by the DG Audit, P&T, the total loss to the exchequer due to non-revision of entry fee for UASL fixed in 2001 was calculated as Rs. 2645 crore. Commenting on the loss figure indicated in the report dated 31 May, 2010, Shri R.P. Singh, then DG Audit, P&T stated during evidence: "You cannot call it presumptive loss. It is a calculation which is normally followed in the Government of India. So I used this method and put that figure." Explaining the reasons for what he recorded in the letter dated 31 May, 2010 Shri R.P. Singh stated on method during evidence:-

"I have, in fact, in my forwarding letter, discounted certain figure which were included by the Audit team. I had a solid reason for this. In Performance Audit we do not write anything until or unless that has supporting evidence. In Audit, you cannot write anything until or unless there is a proof for that to indicate that. So the question that I did not include presumptive loss or I included presumptive loss is not very fair because I had taken it out from the report which was submitted to me by my party. I asked them where the supporting evidence is S. Tel offer, if I can recollect correctly, was an offer which was unsolicited which had demanded a spectrum of particular bandwidth."

7.6 Commenting on this, the C&AG stated during oral evidence, "In this stage of audit, at Branch office level, there were certain findings. Those findings were partly accepted and partly not accepted by the Director-General. Then they came up to the C&AG's office where again his findings were partly accepted and partly not accepted."

7.7 Conceding that the presumptive loss figures arrived at by the Audit could be debated or even disputed, the C&AG stated during evidence: "It is totally open to dispute because when we say presumptive, we are not at any final figure. We have given huge range. You can reduce it; you can go back to 4.19, whatever you want". The concluding para of the C&AG Report (Para 6.6) states: "The fact that there has been loss to the national exchequer in the allocation of 2G spectrum cannot be denied. However, the amount of loss could be debated".

B. Analysis of the Indicators

(i) Offer made by S Tel

7.8 On being asked about the reasons behind considering the S Tel offer for calculating presumptive loss, the C&AG pointed out during evidence: "Why did we use S Tel. Because the High Court directed. It was an offer made. The DoT had not held it valid. They went to the Court; and the Court gave a direction that it is a valid offer. That is why we used it".

7.9 A copy of the Judgment of the High Court of Delhi in W.P.(C) No. 363/2008 in the matter of S-Tel Vs. Union of India delivered on 1 July, 2009 has been furnished to the Committee. The Committee find from para 1 of the Judgment that, the petitioner (S Tel) had sought the quashing of the impugned Press Release dated 10 January, 2008 issued by the Department of Telecommunications to the extent that it deprived the petitioner from being granted Letter of Intent for UAS Licences for 16 circles applied for after 25 September, 2007, but before the Government announcement of cut-off date of 1 October, 2007. From para 15 of the Judgment it can be seen that the petitioner with a view to establish his bona fide and credibility as regards to his financial and technical capability made a representation to the Prime Minister on 5 November, 2007 and to the Minister for Communications on 27 December, 2007. Further, in para 38 while passing the final order the Court had held "that Taking into consideration that on 13.4.2007 the Government of India had recommend to TRAI to furnish its recommendations in terms of 11(e) of the TRAI Act, 1997 which were duly accepted by the Government, the respondent cannot be allowed to arbitrarily change the cut-off date and that too without any justifiable reasons. The respondents having failed to satisfy the Court as to how any public interest would be affected in the matter, the impugned press release dated 10.1.2008 is quashed. The respondents (Department of Telecommunications) are directed to consider the applications submitted by the petitioner on 28.9.2007 for 16 circles. The respondent will also while considering the application of the petitioner submitted on 28.9.2007, consider the letter of the petitioner dated 27.12.2007 wherein the petitioner has made an offer to pay 17.752 crores towards additional revenue share over and above the applicable Spectrum Revenue share".

7.10 Further, on a query regarding the salient features of the S Tel offer, Department of Telecommunications in a written note informed the Committee that M/s. S Tel submitted its voluntary offer for allocation of spectrum *vide* their letter dated 5 November, 2007 and 27 December, 2007. In their letter 5 November, 2007 the company offered voluntarily to pay additional revenue share to the extent of Rs. 6,000 crores to the Department of Telecommunications, over and above the spectrum charges and revenue share payable as per the existing policy, over a period of 10 years from the date of the spectrum allotment. In their letter 27 December, 2007 the Company, while referring to their earlier letter dated 5 November, 2007 had increased the offer to Rs. 13,752 crores over a period of ten years on a scaled up payment schedule. While the company had sought the spectrum upfront, the amount it had offered, was spread over a period of 10 years, with major revenues being back-loaded and only Rs. 250 crores each was proposed in 1st and 2nd year. The company had also stated that, this amount shall become payable after allotment of 6.2 MHz GSM spectrum in 900 MHz frequency band for all the 22 circles and allowing sharing of active network and infrastructure.

7.11 When asked about the response to the issues raised by M/s. S Tel, the Department of Telecommunications in a written reply stated that UASL provides for allotment of initial GSM spectrum of only 4.4+4.4 MHz subject to availability. Spectrum in 900 MHz band had already been allotted to various operators in the past and the Government almost had no spectrum in this band. From the 4th CMTS licences (issued in year 2001) onwards, the startup spectrum was being allocated in 1800 MHz band. In spite of being fully aware of the situation, the Company

made this conditional offer to mislead the Government. Further, Spectrum is allotted to licence holders consequent to receipt of service licence and on fulfilment of prescribed criteria. There is no provision in the licence conditions to allot spectrum on demand and allow sharing of spectrum, as was made out in the S. Tel offer.

7.12 The Committee then desired to know about the circumstances in which the company withdrew its offer. The Department of Telecommunications informed that in reply to SLP No. 33406 of 2009 before the Supreme Court of India in the matter of 'Union of India Vs. M/S. Tel Ltd., dated 29 January, 2010' M/s. S. Tel *inter-alia* stated that ".....the offer of Rs. 13752 crores initially made by the respondent herein *vide* its letter dated 27.12.2007, towards additional revenue share was withdrawn by it during the course of arguments prior to the passing of the impugned judgment....".

7.13 It was pointed out during evidence that S. Tel was listed in the C&AG Report as an ineligible company which received 6 UAS Licences from the Department of Telecommunications as it made a false claim of paid up capital of Rs. 18 crore whereas the company was incorporated on 19 June, 2007 with an authorized share capital of Rs. 10 lakh. Responding to this, the C&AG stated during evidence: "That company was ineligible as per the documentation as much as a large number of other companies which were accepted based on inadequate documents that they had provided. But, please understand one thing. This was a clear perception of what the market could bear. That is what we have said also that had it been an open process, this was the rate at which we could have sold the natural resources."

7.14 The Committee through a written query to M/s. S. Tel desired to know whether they had any suggestions to offer on matters relating to allocation, pricing of telecom licences, spectrum, efficient use of spectrum and regulation of the telecom sector in the country. In their reply M/s. S. Tel stated that all telecom licensing/policy decisions, including allocation and pricing of telecom licences and spectrum, efficient use of spectrum and regulation of the telecom sector in the country should be taken in consultation with the sector regulator, namely TRAI.

(ii) Value based on prices discovered for 3G spectrum

7.15 While forwarding the Audit Report to the DG(RC), the DG Audit, P&T had pointed out that if 2G rates are to be pegged to the rates discovered through auction for 3G spectrum in May 2010, the impact would be Rs. 1,02,497 crores considering the price for 6.2 MHz of spectrum as base. He did not recommend calculation of loss using that as an indicator on the ground that charging for 2G spectrum for roll out was never recommended by TRAI and the Government had never contemplated any charges for the spectrum other than entry fee.

7.16 Justifying the use of the figure as one of the indicators, the C&AG stated during oral evidence as: "The 3G auction concluded in May..... The TRAI recommendations 2003 says for new licence holders they may introduce additional players through a multi stage bidding process as was followed for the fourth cellular operator. TRAI recommendations in August, 2007 recommendation 2.73 (states) 'In todays dynamism and unprecedented growth of telecom sector, the entry fee determined then is also not the realistic price for obtaining a licence. Perhaps, it needs to be re-assessed through a market mechanism'."

He further added:

"I am coming to May, 2010 recommendations it says 3G prices be adopted as a current price of spectrum in the 1800 MHz bands. The current price of spectrum in 1900 MHz band is fixed at 1.5 times that of 1800 MHz *i.e.* the TRAI's recommendation of

May, 2010..... Now, because of that reason, we accepted the recommendations of the Director General. We used his figure only, i.e. Rs. 1,02,000 crore. We have used his figure which is in his letter of 31 May. i.e. the first letter where no involvement of headquarters or anything else was there. That was the figure that he used. We added the value of dual technology. We added the value of spectrum beyond contracted quantity and we have arrived the total of Rs. 1.76 lakh crore. That is the second form of making our calculation. These are the figures we have used. I have said in my report they can be debated obviously."

7.17 Referring to the TRAI references, Shri R.P. Singh pointed out during evidence: "Sir, TRAI observed, but TRAI did not recommend." During evidence, the need was felt for considering TRAI Recommendations in its entirety. It was found that the Audit report had relied upon TRAI assertion that "while comparing spectral efficiency and other factors, it is fair to compare existing 2.75 G systems with 3G systems", contained in TRAI's recommendations dated 11 May, 2010. TRAI recommendation, Para 3.8 reads as follows:-

"The issue to be decided is whether this 3G auction price should be reckoned as the 'current price' of 2G spectrum in the 1800 MHz band for GSM and 800 MHz band for CDMA. There are conflicting views on this subject. While some hold the view that the value of 1800 MHz band is about 1/3rd of the 2100 MHz band, there is a contrary view that the two are comparable. According to this latter view, while the services in 2G started with only voice, most of the current systems deployed offer both GPRS and EDGE services. While GPRS service is used for low data rates, a significant number of users are subscribing to high bit rate EDGE services. 2G services are today actually offering 2.75G services. Therefore, while comparing spectral efficiency and other factors, it is fair to compare existing 2.75G systems with 3G systems to be deployed. This comparison between 2.75G and 3G services has been carried out in a number of papers. On the other hand, those who hold the view that the two are not comparable point out that when the comparison is carried out between voice service of 2G and voice service of 3G or between 2G services (which are actually 2.75G) and the 3G services on HSPA or HSPA+, the system spectral efficiency of 2G will be far lower than 3G, and can even be as low as one third. Another argument is that the supply-demand position is different in case of 2G and 3G."

7.18 Further, in para 3.81 *inter-alia* it has been observed as follows:—

"The Authority could not arrive at a definitive conclusion on this subject at this stage. The Authority is of the opinion that, pending further deliberations on this issue, the 3G price may be adopted as the price for 2G. Keeping in view, the significance of this aspect to the Indian Telecom sector, the Authority is separately initiating an exercise to further study this subject and would apprise the Government of its findings."

7.19 Accordingly, TRAI recommended in Para 3.82 as follows:-

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

7.20 On further perusal of the said TRAI recommendations in para 3.44 *inter-alia* it has been provided:-

"The other option is assignment through Auction. it can be seen that in most service areas, the amount of spectrum that is available after meeting the obligation of the contracted spectrum is very limited. Since operators will be meeting the eligibility

conditions for assignment of the spectrum at different points of time, it is highly doubtful if auction would be an appropriate mechanism. Ideally, auction would be a useful instrument to discover the market price when the number of contenders is large. Thirdly, in the current situation where different licensees have different levels of spectrum, auction can disturb the level playing field. Operators are at various stages of operations, with some having licences close to expiry, and others having recently been allotted new licences, and still others who have been allowed to operate on dual Technology and have recently been allocated spectrum. All old operators have received spectrum (based on SLC) without any kind of auction/competitive pricing. The operators are all competing in the same market and for the same addressable population. In order to maintain a level playing field, it would be necessary to avoid the auction route for the newer operators for whom an auction would raise the cost of providing service *vis-a-vis* the operators who already have more than 6.2 MHz of spectrum. Given the competitive market conditions this cost can most certainly not be passed on to the consumer. A free auction of 2G spectrum wherein any service provider may compete for additional spectrum carries a serious risk of Spectrum hoarding, since the business model of an established operator would be different from that of a new operator, giving an unfair advantage in the competition.

The objectives for the award process of spectrum are that the spectrum should be awarded transparently and fairly; that the process should promote efficient use of spectrum in terms of stimulating competition and increasing roll out; that it should ensure effective competition for spectrum and that it should generate revenue for the public purse. The recommendations of TRAI in respect of bands other than 800, 900 and 1800 MHz is already that the spectrum should be awarded through auction process. Only in respect of these three bands, TRAI had recommended even in 2007, and for reasons detailed, that auction would not be appropriate. This has been examined once again as above and the Authority reiterates that auction may not be the appropriate course of action for these bands. In so far as awarding spectrum transparently and fairly, definite criteria have been laid out moving away from the subscriber linked criteria. Roll-out obligations have also been specified separately. With 12 to 14 licensees in each service area, competition is not lacking. As regards generation of revenue for the Government, this is being dealt with separately in the section dealing with the spectrum pricing. On careful reflection, and for reasons detailed above, the Authority is of the opinion that it is not feasible to auction spectrum in the 800, 900 and 1800 MHz bands."

7.21 Accordingly, TRAI recommended in Para 3.46 that:—

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

7.22 To a specific question during evidence if there was a TRAI recommendation or Cabinet decision to go for auctioning of 2G spectrum, the C&AG conceded:—

"Sir, there was no Cabinet decision. The Cabinet decision was of 2003 but we have on record which I think we have placed that the hon. Prime Minister himself was saying that there is a cause for concern and this figure was not realistic. We have on record which fortunately now is in public domain. In fact, when we did the audit, we did not have those figures and those records with us of Ministry of Finance and the PMO both where all of them have objected to use that figure which was being used by the Department of Telecom and said we need to raise it up to the GoM. I do not think Cabinet but they have all said that we need to raise it up to GoM level and that we need to add on to that."

7.23 The Committee desired to know about the views of Department of Telecommunications on the linking of 2G and 3G and using the criteria of 3G auction price for calculating presumptive loss. Department of Telecommunications in a written reply opined that the C&AG Report has relied on some of the recommendations dated 1 May, 2010 of TRAI on "Spectrum Management and Licensing Framework" and had not considered all the recommendations dated 11 May, 2010 of TRAI. It has also been clarified by Department of Telecommunications that a legacy methodology for allocation of 2G spectrum had been followed while the 3G spectrum was allocated for the first time. TRAI, in its recommendations dated 28 August 2007, recommended that "As far as a new entrants is concerned, the question arises whether there is any need for change in the pricing methodology for allocation of spectrum in the 800, 900 and 1800 MHz bands. Keeping in view the objective of growth, affordability, penetration of wireless services in semi-urban and rural areas, the Authority is not in favour of changing the spectrum fee regime for a new entrant. Opportunity for equal competition has always been one of the prime principles of the Authority of suggesting a regulatory framework in telecom services. Any differential treatment to a new entrant *vis-a-vis* incumbents in the wireless sector will go against the principle of level playing field. This is specific and restricted to 2G bands only i.e. 800, 900 and 1800 MHz. This approach assumes more significance particularly in the context where subscriber acquisition cost for a new entrant is likely to be much higher than for the incumbent wireless operators. (Para 2.78)" Therefore, it may not be appropriate to compare the pricing of 2G spectrum with the 3G spectrum.

7.24 In the course of oral evidence before the Committee, when asked whether 2G and 3G services could be compared, a representative of the Cellular Operators Association (COAI) of India stated that "the equipments for 2G and 3G are different. I cannot produce 3G services from 2G equipment. For 3G, we have to make an additional investment". In this regard a representative of the Association of Unified Telecom Service Providers of India (AUSPI) in oral evidence also added that we cannot compare that 2G and 3G by efficiency or revenue or investment. In this regard, the Department of Telecommunications in a written reply further clarified that the cost of 3G (2100 MHz band) Network construction and maintenance will normally be higher than that of 2G (800 MHz, 900 MHz) and marginally higher than that of 2G in 1800 MHz networks and that the data rates of 3G are higher than that of 2G. When asked whether it was a fact that 2G has substantial use in developing countries like India due to much lower cost of operation and use, the Department stated that 2G systems with speed ranging from 9.6 kbps to 28.8 kbps are normally of lower cost than 3G systems with higher data rate speed. The 2G handsets, which have features of only voice and short messaging services (SMS), will normally cost lower than the 3G handsets and, therefore, 2G handsets are within the reach of the common man.

7.25 Commenting on the outcome of the 2G auctions held in 2012, Shri R.P. Singh stated during his evidence on 22 January, 2013: "Now, the rate of 2G through auction is also available today. If you apply that, the figure of loss will definitely be different. Another auction is going to be held in March, that is, fourth one for 2G and another price will be discovered. I do not know as to finally which price will be recommended by TRAI or anybody else. It is very difficult to say as of today as to what is the actual loss. It was never possible to calculate the actual loss."

(iii) Sale of equity by UAS licensee firms at higher value

7.26 During evidence, the C&AG stated that the third indicator relating to the FDI was not recommended by the DG Audit, P&T in the report. An internal note dated 8 July 2010 in the office of DG Audit, P&T indicates that at the instance of Principal Director (Report Central), a para on loss of potential revenue on issue of licences was prepared in the office of DG Audit,

P&T and forwarded to the Headquarters. According to the draft audit para, based on the lowest value of foreign investment a new UAS Licensee was able to attract, the minimum loss to the Government on this basis would work out to Rs. 50,463.6 crores. This is only indicative in nature for valuation of UASL. The note recorded: "As directed by PD(RC) a para on loss of potential revenue on issue of licences taking the price to the FDI attracted by UAS Licences is placed opposite for perusal. In this connection, it is submitted that we are not on strong grounds in the arguments made. However, since Hqrs. has directed for a draft we may forward it along with our comments."

7.27 While forwarding the draft para to the Principal Director (RC), the Director (RC) raised the following points in his letter dated 8 July, 2010:—

- (i) Investments by foreign companies did not transgress the UASL guideline.
- (ii) To attribute the foreign investments completely to UASL may not be appropriate because one of the major factors an investor would consider before venturing into any market would be its size. Indian telecom sector with less than 30 percent tele-density in 2008 obviously had huge potential.
- (iii) M/s. Swan and M/s. Unitech stated that the investment brought in by their strategic foreign partners would be used for rolling out the services and this could enhance their capital base keeping the absolute share holding of the promoters intact.
- (iv) Finance Ministry had concurred that it is a case of dilution of equity and not sale of equity of promoters.

Hence it will be difficult to establish a tenable link between the value of UASL and the net worth of foreign investments the licensees attracted."

7.28 Justifying the stand taken in the letter, former DG Audit, P&T, Shri R.P. Singh stated during evidence:—

"From DoT we received a reply that this is not a sale of equity. It is an infusion of the fresh equity by expanding the equity base and giving those shares to the investors through FDI, duly approved by the Foreign Investment Promotion Board and the Ministry agreed with that. The Finance Minister also did not qualify or did not agree that it was a sale. Therefore, I was inclined to agree with the Ministry's reply."

7.29 The Committee then queried the Department of Telecommunications on the facts relating to the sale of equity by telecom companies. Department of Telecommunications in a written reply, detailing the background of the issues involved in the matter, informed that M/s. Swan Telecom Pvt. Ltd. and M/s. Unitech Wireless Companies were awarded Licences for Unified Access Services of 13 and 22 service areas respectively in February-March, 2008.

These companies have informed that they have made strategic partnership for investment in the company as per the Companies Act and have entered into agreement with foreign companies namely, Etisalat Mauritius Limited and Telenor Asia Private Limited, Singapore respectively for infusion of equity capital into the company by issuing fresh equity for rolling out the telecom network in the licenced service areas.

7.30 When asked about the legality of the sale of such equity and valuation of companies, the Department of Telecommunications stated that it is a complex exercise and depends on a number of factors including the business case over the period of licence. Department of Telecommunications specifically clarified that the investment brought in by strategic foreign

partners of these companies would be utilised for rolling out the services and even this would enhance their capital base keeping the absolute share holding of the promoters intact. In the above cases, as per the licensee companies, they have issued additional equity for bringing in foreign investment and as they have not transferred promoters' equity shares, promoters' equity has not been diluted. Foreign investment brings in capital as well as technology. It is a normal practice in the corporate world to bring investment into the company for rolling out or expansion of business. On earlier occasions also, FDI has been infused in licensee companies as per FDI policy of the Government. Government has been encouraging FDI in the country since beginning. As per Foreign Direct Investment (FDI) policy applicable in telecom sector, FDI up to 49% is under the automatic route. FDI in the licensee company/Indian promoters/investment companies including their holding companies shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent.

7.31 In the course of examination of the subject, the Committee came across a document furnished by the PMO. In the same the Committee found a Department of Telecommunications communication sent to PMO in response to a specific reference, wherein the Department, reiterating the above stand, had elucidated that from the very beginning in 1996 onwards, various companies have through a process of equity dilution and other permissible process, inducted strategic partners or changed them. The Department of Telecommunications cited the example of one of the original licence holders in one metro circle which later on inducted the ESSAR group. The subsequent entity has from time to time inducted Swisscom, Hutchinson Whampora and Vodafone which are all international companies, as strategic partners. 74 per cent cap on FDI is the norm in the industry and not every induction of a partner or dilution of equity necessarily means a cashing out by the original promoter.

7.32 The Committee also desired to know from the CBI, if investigations had revealed any transfer of promoters equity. In a written reply, the CBI informed that M/s. Etisalat (Mauritius) Ltd., a group company of M/s. Emirates Telecommunications Corporation of UAE, infused additional equity by subscribing to the additional shares of M/s. Swan Telecom Pvt. Ltd. On 17 December, 2008 for a total consideration of Rs. 3228 crores. Similarly, M/s. Genex Exim Ventures Pvt. Ltd, subscribed to additional shares of the company on 17 December, 2008 for a total consideration of Rs. 380 crores. In this way 45 per cent of the total stake of M/s. Swan Telecom Pvt. Ltd. was purchased by these two companies by infusing additional equity. The CBI has also stated that investigations also revealed that M/s. Telenor Asia Pte. Ltd. and M/s. Telenor Mobile Communications AS, Telenor infused additional equity to M/s. Unitech Wireless group companies for 66.5 per cent stake for a total consideration of Rs. 6135 crores. When asked whether such transfer of shares was in contravention of the Foreign Direct Investment policy applicable in the telecom sector, CBI in another written reply stated that investigations did not reveal evidence regarding criminality in the aforementioned infusion of additional equity by foreign companies into the said two companies or contravention of the FDI investment policy applicable in the telecom sector.

C. Calculation of 'Presumptive' Loss

7.33 The Committee in the course of its examination attempted to understand the nuances of the word 'Presumptive' as used in the said C&AG report. To a specific query whether there were any guidelines in the C&AG office defining the use of the word 'presumptive' and the manner in which losses can be calculated on presumptive basis, the office of the C&AG in a written reply apprised that the guidelines for audit are contained in the CAG's Manual of Standing Orders (Audit). Attention was drawn to Para 7.3.25 (a) of the Manual, which states that "Cases involving transgression of statutory provisions, rules or orders and other cases that have led to are likely to lead to substantial loss of public money may be mentioned individually". It has also been apprised that the Income Tax Act has certain provisions for levy of tax on

presumptive basis, notably the provision of Section 115JP which pertains to the levy of Minimum Alternative Tax for loss making/low profit making companies. Section 44AD of the Income Tax Act (applicable from AY 2001-12) also provided for computing profits and gains of certain business on presumptive basis. Further, Audit Reports on Direct Taxes contain paragraphs on potential tax effect. Potential tax effect is calculated in cases of loss making assesses where their losses are carried forward for set off in future years. Similarly, there are instances where potential loss of revenue on account of absence of ambiguities in provisions of Central Excise and Services taxes.

7.34 During evidence the C&AG stated "Presumptive is a word which is used all over the world. It has genesis in the Income Tax or the Direct Tax Code". However, during his deposition before the Committee Shri R.P. Singh gave a totally different version: "No audit record or no audit principles were there. I was said to calculate loss on the basis of presumptions. So far I have not come across in my entire career". Shri R.P. Singh added: "Calculating losses on the basis of presumptions, a lot of subjectivity is involved in that".

7.35 The Committee then asked the Ministry of Finance regarding the scope of the word presumptive used in the various Taxation laws. In a written reply, the Ministry of Finance (Department of Revenue) informed that the word 'presumptive' finds mention in both the Direct Taxes Code Bill, 2010 (which is pending before the Parliament) as well as the Income Tax Act, where in it has been provided for determination of income of certain specific business where their income is presumed to be a certain percentage of their total receipts. This has been done so as:-

- (i) To lower the compliance burden in the case of small tax payers as regards maintaining detailed books of accounts;
- (ii) To simplify the determination of income in case of specified business of non-residents as the income accruing or arising in India from such businesses is to be segregated from the global income of the non-residents.

7.36 To a similar query, the Ministry of Law & Justice (Department of Legal Affairs) listed out the various meanings of the word presumptive as available in English language dictionaries and law dictionaries. According to P. Ramanatga Aiyar's Lexicon, the word "presumptive" means that which may be assumed to be valid or true until the contrary is established. The Webster's Encyclopaedic Unabridged Dictionary English Language, defines 'presumptive' as (i) affording ground to presumption; (ii) based on presumption, (iii) regarding as such by presumption; based on inference. BLACK'S Law Dictionary, defines presumptive as resting on presumption; created by or arising out of presumption; inferred; assumed. The Ministry clarified that presumptive loss is not conclusive or may not be the actual loss. Further it has been apprised that, "presumptive loss" has not been defined in Section 2 of the Income Tax Act, 1961. However, special provisions have been made as per the Income Tax Act, 1961 for calculating the income on presumptive basis. Presumptive taxation involves lumpsum levies on certain small-scale business activities to whom Section 44AB is not applicable. The assessment of taxes through indicators help estimate a taxpayer's income (estimated income); and the estimation of minimum income irrespective of a taxpayer's actual level of business activity (presumptive minimum income).

D. Audit of Government Policy

7.37 During evidence, justifying the audit the C&AG stated: "While according the Government's prerogative to formulate the policy of UASL, it was felt that an in-depth examination of implementation of such policy needed to be done. We are very clear. We do not question the Government (policy). It is sole prerogative of the Government. We have made it very clear in this. It is a constitutional mandate".

7.38 While communicating the C&AG's decision to audit the grant of licenses and allocation by the Department of Telecommunications in respect of various services, the then DG Audit, P&T in his letter dated 18 November, 2009, *inter-alia* stated: "The aspects of policy, decisions taken, selection and rejection criteria of applicants for licenses, process of issue of licenses to the selected operators, policy and procedure adopted for allocation of 2G spectrum, logic and reasons behind the policies in these matters will also be included in the examination. The policies and decisions taken in respect of 3G services will also be examined". The draft performance audit report was sent to the Department of Telecommunications on 19 July, 2010. The Department of Telecommunications made a reference to the Ministry of Law and Justice on 12 August, 2010 for seeking opinion on the powers of the C&AG to challenge decisions of Government. The policies of the Government which were challenged by the C&AG according to the Department of Telecommunications were: (i) Unified Access Service (UAS) Licensing Policy Formation in year 2003 and (ii) Policy failed to address the issue of price discovery of spectrum. While rendering their opinion on 7 September, 2010, the Ministry of Law and Justice clarified that the C&AG had no duty or power to challenge policy decisions taken by the Government on the following grounds:

"The Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 prescribes CAG duties and powers to discharge his duties related to audit for accounts. As per Article 149 of the Constitution, his duties and powers are also chartered in relation to the audit and accounts of the Union in accordance with law made by Parliament. CAG Act, 1971 nowhere provides that he has any duty or power to question the wisdom of the policy/law makers as policy decision may involve trial and error theory. CAG, CVC and other watchdog no doubt play a very significant role in any democracy but they being constitutional/statutory functionaries cannot exceed the role assigned to them under the constitutional/law. Even the Courts refrain to question wisdom of Government in policy matters unless the policy decision is patently arbitrary, discriminatory or *mala fide*. The Courts also refuse to entertain any reference which is political or hypothetical or academic nature and it entertains the reference having a *lis* and where the competing parties are accorded full opportunity to state/defend their interest."

7.39 The opinion of the Ministry of Law and Justice was intimated to DG Audit, P&T on 21 September, 2010 by the Secretary, Department of Telecommunications stating: "I would like to inform that on the aforesaid query of this Department, the Ministry of Law and Justice, on 7.9.2010, has answered in the negative and opined that the CAG has no duty or power to challenge policy decisions taken by the Government". The matter was processed in the C&AG Headquarter. A.A.O. (RC) put up a note to DG(RC) on 20 October, 2010. After keeping the file for more than a month, DG(RC) recorded a note on 23 November, 2010 stating that "In the present case, since the Ministry of Telecommunications has not taken the issue with the Ministry of Finance which is the nodal authority dealing with the duties and powers of C&AG of India, we may not take any action on the subject for the time being". The note has the signature of Deputy Comptroller & Auditor General (RC) but does not seem to have been placed before the C&AG.

E. TRAI's views on Loss

7.40 The TRAI in one of its communications forwarded to the Committee informed that the Central Bureau of Investigation *vide* its letter No. RC2009-DAI-A0045/707 dated 19 January, 2011 had requested TRAI that the experts who had given the 2010 value of spectrum in 1800 MHz band, may be requested to determine the price of the CMTS/Basic/UAS licence which comes bundled with a spectrum of 4.4 +1.8 MHz, on technical and commercial parameters for the years 2001 to 2008 on yearly basis. Accordingly, TRAI requested the experts, who had estimated

the value of spectrum in 2010 to estimate the same. The experts submitted their Report on 19 August, 2011. The following were the conclusions of the experts:—

- (i) Retrospectively estimating annual value of spectrum in the 1800 MHz band for 8 years between 2001 and 2008 is a tricky exercise at best of times. Access to data is crucially important, but equally, if not more important is access to business plans and forecasts of service providers who invest in the market. We do not have access to the latter information and even the data that we have is inadequate, as documented in our report. We therefore conduct the exercise of estimating market value of spectrum under severe data constraints and a changing technological environment.
- (ii) We employ two economic models in the report: one is the classical production function approach and the other a 'bottom up' adaptive expectations model. They complement each other since the production function calculates the value of spectrum as an opportunity cost, a sort of 'macro' approach, while the adaptive expectations model is closely tied to the firm's business plan.
- (iii) The estimates of the values of the spectrum are in a broad range, the adaptive model providing a lower estimate and the production function an upper estimate. For the terminal year, the range of estimates of the value is between around Rs. 5500 crores to Rs. 9,500 crores, and the range narrows for earlier periods. Given that we are trying to estimate a value that bidders would have placed had spectrum been auctioned, it is not unreasonable to expect variation between different approaches. Given the scant data that is available to us, it is also not possible to estimate the standard errors or the confidence intervals for our estimates.
- (iv) It is therefore not possible to predict with certainty the precise value of spectrum that would have emerged in an auction. The risk of error in the estimates increases since the exercise is carried out retrospectively and with meagre data. We are however confident of the analytical foundations of the methods and their appropriateness to the task. However, we cannot rule out the possibility armed with richer data we could improve the reliability of our estimates.....

7.41 TRAI in its response to the CBI observed that the Authority had issued its recommendations on 'Spectrum Management and Licensing Framework' in May, 2010. In para 3.106 it had been stated that "It must be pointed out that the grant of licenses at Rs. 1659 crore (pan-India) was a matter of policy.... While revenue generation is no doubt significant, NTP-99 underlines the need for providing telecom services at affordable rates. That the low telecom tariffs in this country have fuelled the rapid growth of telecom services in the country, and have helped different sections of society to access these services, is widely acknowledged". Further, TRAI notes that the NTP-99 does not lay down auction method as the procedure for the entry of operators from the fourth operator onwards. It is only the letter of 12 July, 1999 from the Department of Telecommunications that speaks of selection through bidding 'for the licence' i.e. the fourth operator. TRAI accordingly determined, in June 2000, that entry fee should be the component to be decided through a multi-stage bidding process. Therefore, throughout its recommendations from October 2003 till August 2007, TRAI never recommended auction methodology. UAS licensing regime was introduced in November 2003. Its recommendation always kept in view the need for growth of the Telecom sector including in the semi urban and the rural areas, the need for maintaining the level playing field against the backdrop of entry of new players from time to time and the need to ensure that the prices of telecom services were affordable by the consumers. TRAI repeatedly held the view that telecom services and spectrum should not be treated as a source of revenue for the Government. It is against this background that TRAI did not recommend, including in August 2007, auction methodology, nor did it recommend any increase in the Entry fee for new players, by way of indexation or otherwise.

F. The Guiding Principles for Telecom Sector

7.42 Dwelling on the guiding Principles on which calculations of loss on account of allocation of licenses and spectrum was based, the C&AG stated during evidence: "When we talk about loss, I have two backgrounds on the basis of which we took it. One is, as I mentioned to you, the guiding principle of the Planning Commission which says that spectrum pricing needs to be based on relative demand and supply over space and time in a dynamic manner. This is the time when the Ministry of Finance was advising the DoT to be dynamic, the price of Rs. 1658 crore fixed in 2001 on market basis needs to be revised; this is the time when the Hon. Prime Minister was also writing to the DoT, 'I am concerned about this, because this price is not an accurate price and needs to be better indexed'. This is another point". During evidence the C&AG conceded: "One was, of course, that the discussion with the Ministry of Finance was never took place".

7.43 While examining any matter of policy it is pertinent to keep in mind the overall objectives before the Government of the given point of the time. The Preamble to the Constitution of India proclaims India to be a Sovereign Socialist Secular Democratic Republic. The Preamble also provides for the resolve to secure to all its citizens among other things equality of status and of opportunity. Further, Article 39(b) of the Constitution under the Directive Principles of State Policy *inter-alia* provides that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.

7.44 NTP 1999 had envisaged to make available telephone on demand by the year 2002 and sustain it thereafter so as to achieve a tele-density of 7 by the year 2005 and 15 by the year 2010 and to encourage development of telecom in rural areas making it more affordable by suitable tariff structure and making rural communication mandatory for all fixed service providers and to increase rural tele-density from the current level of 0.4 to 4 by the year 2010 and provide reliable transmission media in all rural areas.

7.45 The 10th Plan document was formally released on 21 December, 2002 covering the period from 01 April, 2002 to 31 March, 2007. The major initiatives/action points envisaged for the telecom sector in 10th Plan were as follows:—

- (i) To achieve a target of tele-density of 9.91 by March, 2007, about 659 lakh new telephone connections need to be provided during the Plan Period.
- (ii) The Telecom sector needs to be treated as an infrastructure sector for the next decade or so in order to achieve the targets of tele-density in line with the objectives laid out in the NTP, 99. This is envisaged also to help achieving substantially higher rate of growth of broadband to meet the requirements of other sectors of the economy especially information technology and entertainment.
- (iii) Government's broad policy of taxes and regulation for the telecom sector has to be promotional in nature with a view to ensuring optimum growth in the coming years. Revenue generation should not be a major determinant of the macro policy governing the sector.
- (iv) Guided by this principle and keeping in line with the policy adopted by most of the progressive administrations in the world, the licence fee needs to be aligned to the cost of regulation and administration of Universal Service Obligation (USO).
- (v) Ensuring fair and timely interconnection in the multi-operator scenario is one of the major inputs for sustaining high growth. Government's intervention may be required in the form of establishing a fund to finance the requirements of capacity especially of incumbent operator to meet increased requirement in this regard.

- (vi) The policy governing spectrum allocation and licensing has to be so designed that this scarce resource is used optimally and does not become a constraint for growth.
- (vii) Spectrum pricing need to be based on relative demand and supply over space and time in a dynamic manner and should promote introduction of spectrum efficient technology. A significant chunk of available spectrum is being used by defence, police and para-military forces. A concrete action plan needs to be put in place to upgrade and modernise the technology being used by these forces so as to ensure efficient and optional utilisation of spectrum allotted and releasing the surplus spectrum for use by civilian purposes. Necessary funds would have to be made available for the purpose.

G. Guiding Principles-Spectrum Policy

- (i) Spectrum policy needs to be promotional in nature; revenue considerations playing a secondary role.
- (ii) Pricing and allocation should ensure that available spectrum is utilised optimally.
- (iii) With a view to ensure optimal utilisation of allocated spectrum to an operator at a given point of time, the surplus capacity available with the licensee may be permitted to be leased out/assigned to other users for a limited period without putting undue strain on the systems for which band has been earmarked.
- (iv) Spectrum pricing need to be based on relative demand and supply over space and time in a dynamic manner. Opportunity cost to reflect the relative scarcity of the resource in a given situation.
- (v) A significant chunk of available spectrum is being used by defence, police, and para-military forces. A concrete action plan needs to be put in place to upgrade and modernise the technology being used by these forces so as to ensure efficient and optional utilisation of spectrum allotted and releasing the surplus spectrum for use by civilian purposes. Necessary funds would have to be made available for the purpose.
- (vi) Spectrum pricing also needs to ensure the introduction and promotion of spectrum efficient technology.

7.46 In a clarification furnished to the Committee, on the meaning of opportunity cost as mentioned in the 10th Plan document, the Ministry of Law and Justice, stated that opportunity cost is the cost of any activity measured in terms of the value of the best alternative that is not chosen (that is foregone). It may be seen that the Government in line with the objectives of the NTP 99 and the 10th Plan document followed a policy of administered price for spectrum, rather than opting for market discovery of its price. Therefore, it becomes imperative to examine, whether, by adopting a policy of foregoing market value of spectrum a scarce resource, which was also in line with TRAI recommendations, what value has accrued to the nation in terms of achieving the objectives set out in the NTP 99, 10th Plan document, thereby making mobile telephony accessible to consumers in the country.

7.47 In course of evidence of Shri D. Subbarao, former Finance Secretary when asked about the loss that may have been caused to the exchequer in the above context, he stated that, "If in the view of the Government you want to give spectrum and licenses and sacrifice some revenue in the expectation that this would increase the tele-density and maximize welfare, then I believe, that you cannot attribute a financial loss to that. So, to say that there was a loss, to

calculate loss you have to have reference points. So, it is not clear where the balance lay between welfare maximization and revenue maximization.” On the same question, Shri K.M. Chandrasekhar, former Cabinet Secretary, added that “The issue to be considered here is whether there has been ‘atonement of revenue’. My own interpretation would be that the ‘revenue’ in this case relates to revenue that accrues by way of implementation of existing policies. The existing policy prescribed a particular entry fee for spectrum. If the Department of Telecommunications had allocated spectrum below the prescribed entry fee, there would have been ‘abandonment of revenue’. The concept cannot, in my view be extended to revenue that may have been obtained had the policy been different”.

7.48 Justifying deletion of audit observations relating to policy, Shri R.P. Singh stated during evidence: “Even today, I do not subscribe to the theory of calculative losses on the basis of presumptions because that will touch upon the boundaries of a sort of policy prescriptions in my view. That is it. Therefore, I deleted them and I retained whatever portion which I was satisfied that I should report in my version”. On being asked whether there was gain by the consumers as a consequence of the low price, Shri R.P. Singh replied: “The presumption is that, had we allotted these licenses and issued spectrum directly, that much money would have come into Government coffers. Obviously, any burden or any extra cost, that would have been passed on by the service providers to the consumers. Normally the people would have ended up paying more or at a higher rate.”

H. Opinion of Supreme Court on Presidential Reference

7.49 The Hon'ble Supreme Court on 2 February, 2012 delivered its judgement in the matter of Centre for Public Interest Litigation and Ors. Vs. Union of India and Ors. In its judgement the Hon'ble Court *inter-alia* directed TRAI to make fresh recommendations for grant of licenses and allocation of Spectrum in 2G band by holding an auction, as was done for the allocation of 3G Spectrum. Consequently, the President of India under clause (1) of Article 143 of the Constitution preferred a reference to the Supreme Court under its advisory jurisdiction and *inter-alia* sought consideration and report on the matter whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions. The Supreme Court delivered its opinion on 27 September, 2012. In this regard the Supreme Court *inter-aila* opined as follows:-

- (i) The norm of “Common good” has to be understood and appreciated in a holistic manner. It is obvious that the manner in which the common good is best subserved is not a matter that can be measured by any constitutional yardstick — it would depend on the economic and political philosophy of the Government. Revenue maximization is not the only way in which common good can be subserved. Where revenue maximization is the object of a policy, being considered *qua* that resource at that point of time to be best way to subserve the common good, auction would be one of the preferred methods, though not the only method. Where revenue maximization is not the object of a policy of distribution, the question of auction would not arise. Revenue consideration may assume secondary consideration to developmental considerations. (para 119)
- (ii) A *fortiori*, besides legal logic, mandatory auction may be contrary to economic logic as well. Different resources may require different treatment. Very often, exploration and exploitation contracts are bundled together due to the requirement of heavy capital in the discovery of natural resources. A concern would risk undertaking such exploration and incur heavy costs only if it was assured utilization of the resource discovered; a prudent business venture, would not like to incur the high costs involved

in exploration activities and then compete for that resource in an open auction. The logic is similar to that applied in patents. Firms are given incentives to invest in research and development with the promise of exclusive access to the market for the sale of that invention. Such an approach is economically and legally sound and sometimes necessary to spur research and development. Similarly, bundling exploration and exploitation contracts may be necessary to spur growth in a specific industry. (Para 130)

- (iii) A potential for abuse cannot be the basis for striking down a method as *ultra vires* the Constitution. It is the actual abuse itself that must be brought before the Court for being tested on the anvil of constitutional provisions. In fact, it may be said that even auction has a potential of abuse, like any other method of allocation, but that cannot be the basis of declaring it as an unconstitutional methodology either. These drawbacks include cartelization, “winners curse” (the phenomenon by which a bidder bids a higher, unrealistic and unexecutable price just to surpass the competition; or where a bidder, in case of multiple auctions, bids for all the resources and ends up winning licenses for exploitation of more resources than he can pragmatically execute), etc. However, all the same, auction cannot be called *ultra vires* for the said reasons and continues to be an attractive and preferred means of disposal of natural resources especially when revenue maximization is a priority. Therefore, neither auction, nor any other method of disposal can be held *ultra vires* the Constitution, merely because of a potential abuse. (Para 135)
- (iv) In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as *ultra vires* the constitutional mandate. (para 148)
- (v) Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution. (Para 149)
- (vi) In conclusion, our answer to the first set of five questions is that auctions are not the only permissible method for disposal of all natural resources across all sectors and in all circumstances. (Para 150)

I. Achievements made in the Telecom Sector

7.50 Shri Pradip Baijal, former Chairman, Telecom Regulatory Authority of India, during oral evidence, while giving an overview of the Telecom Sector in the country apprised the Committee that, in the eight years after introduction of mobiles, their tele-density was 1%, much lower than very backward countries. Tariffs and handset costs were unaffordable except for very rich. Telecom companies were incurring huge losses, and not investing. They were not going into interiors. Auctions for interiors had failed. Huge investments were required. He added that the entire sector was in courts on technology/service-wise licensing issues. There were cases in the Supreme Court and the High Court and the TDSAT, with applications for stay every other day. The provisions of licenses had been misused. Whereas, China, with a similar population was

22 times of India's network, and was growing at a rate 35 times ours. This had to be changed and the sector had to be brought out of courts. TRAI made recommendations on 27 October, 2003 and the Cabinet accepted the same. The most important decisions taken then included that:—

'Strategy has to be based on the single priority of the moment, viz. increasing the availability of phone connections at affordable costs and tariffs and ensure fast roll out of services. Growth of tele-density revolves around access networks and need to make available low cost access'. (Para 6.2)

'Within six months 'Unified Licensing should be initiated for all services covering all geographical areas using any technology'. (Para 7.1)

7.51 Shri Bajjal further added that such efforts led to increase in penetration of telecom services in the country. Today, China and India both have more than 900 million mobile connections. With this growth, India will surpass China's absolute mobile numbers in 2012, and become a country with highest number of mobiles in the world. In terms of tariffs, he stated that, in the 1990s; telecom tariffs in the country were very high—Rs. 32/minute (Rs. 16 charged at each end). Today the tariffs are much less than Re. 1 per minute, the lowest in the world, despite the fact that telecom equipment is similarly priced.

The Committee then sought to know from the Department of Telecommunications about the average tariff charges for use of mobile telephony in the country during the period from 1999 to 2009. In a written reply the Department stated that the average outgo per outgoing minute (Rental revenue plus call revenue per outgoing minute) for GSM full mobility service derived from the information provided by the service providers to the TRAI, for the period 1999 to 2009 is indicated as below:

Quarter ending	Average outgo* per outgoing minute
March, 1999	16.93
March, 2000	8.55
March, 2001	6.38
March, 2002	4.86
March, 2003	3.24
March, 2004	2.89
March, 2005	2.41
March, 2006	1.77
March, 2007	1.15
March, 2008	0.92
March, 2009	0.76

*Includes both rental and call charges.

7.52 The Committee further sought information pertaining to the subscriber base and tele-density in the country during the period 1999 to 2009 year-wise, separately for urban and rural areas during the said period. In this regard the Department of Telecommunications provided the following details:—

As on 31st March	Subscriber Base in Million			Tele Density in %		
	Rural	Urban	Total	Rural	Urban	Total
1999	—	—	22.81	—	—	2.33
2000	4.84	23.69	28.53	0.68	8.35	2.86
2001	6.69	29.59	26.28	0.93	10.16	3.58
2002	9.14	35.82	44.97	1.21	12.2	4.49
2003	11.41	43.21	54.62	1.49	14.32	5.11
2004	12.27	64.27	76.54	1.57	20.74	7.02
2005	13.57	84.80	98.37	1.73	26.88	8.95
2006	18.54	123.55	142.09	2.34	38.28	12.74
2007	47.10	158.77	205.87	5.89	48.10	18.22
2008	76.50	223.99	300.49	9.46	66.39	26.22
2009	123.51	306.21	429.72	15.11	88.84	36.98

7.53 In a subsequent reply furnished by the Department of Telecommunications, the Committee were informed that the tele-density in the country continued to increase in the following years, rising to 52.74% in 2009-10, 70.89% in 2010-11 and 78.66% in 2011-12. From the above, it may be seen that whereas the tele-density had increased by 3.79, 5.48 and 8.00 percentage points in the years from 2005-06 to 2007-08 respectively, the increase registered in percentage points in the years from 2008-09 to 2011-12 was considerably higher, viz. 10.76, 15.76, 18.15 and 7.77 respectively.

CHAPTER VIII

THE ROLE OF TELECOM REGULATORY AUTHORITY OF INDIA (TRAI)

8.1 Till 1991, the Telecommunications sector in India was a monopoly of the State. Upto 1986, the Department of Telecommunications was the only telecom service provider in India. But the Department's role spanned beyond this and it acted as the policy maker, planner, developer as well as the implementer. The advent of Mahanagar Telephone Nigam Limited in 1986 brought a second player in telecom services though it too was a Central Public Sector Enterprise. However, the New Economic Policy, 1991 heralded liberalization, privatization and globalization of the Indian economy. The telecom sector was identified as one of the sectors to be opened up in pursuance of the New Economic Policy. In the year 1992, tenders were issued for grant of two licenses in each of the four Metros of India and licenses were granted to the private operators in November, 1994. In the meantime, with the pronouncement of the National Telecom Policy, 1994, the sector was sought to be further deregulated and liberalized with the objective of ensuring India's emergence as a major player in the telecom horizon globally.

8.2 With the entry of multiple service providers, a mixed environment of public and private operators necessitated an independent regulator. The purpose of a regulator is to prevent profiteering, ensure provision of a universal service and level playing field, prevent self-destructive price competition and protect customers, employees and the environment from harm or damage resulting from inappropriate behaviour of firms.

8.3 Accordingly, the Government proposed to set up an independent Telecom Regulatory Authority, initially as a non-statutory body. However, based on the recommendations contained in the 22nd Report of the Standing Committee on Information Technology (10th Lok Sabha), it was decided to give statutory status to the regulatory authority to enable it to function effectively and independently. An ordinance was issued on 25 January, 1997, establishing Telecom Regulatory Authority of India (TRAI) as an independent regulatory agency for the telecom sector.

8.4 Thereafter, the Telecom Regulatory Authority of India (TRAI) Act, 1997 was enacted by the Parliament on 28 March, 1997 and came into force w.e.f. 25 January, 1997. As per the TRAI Act, 1997, some of the major functions of the Authority were to—

- (a) Recommend the need and timing for introduction of new service provider;
- (b) Recommend the terms and conditions of licence to a service provider;
- (c) Ensure technical compatibility and effective inter-connection between different service providers;
- (d) Regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;
- (e) Ensure compliance of terms and conditions of licence;
- (f) Recommend revocation of licence for non-compliance of terms and conditions of licence;
- (g) Facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

- (h) Protect the interest of the consumers of telecommunication service;
- (i) Settle disputes between service providers; and
- (j) Levy fees and other charges at such rates and in respect of such services as may be determined by regulations.

8.5 The President of India, while addressing the Joint Session of Parliament on 25 October, 1999 had stated that TRAI would be strengthened to increase investor confidence and create a level playing field between public and private operators, by making suitable amendments in the TRAI Act, 1997. In pursuance thereof, the Government constituted a Group on Telecom and Information Technology Convergence (GoT-IT) under the Chairmanship of the then Finance Minister on 13 December, 1999. One of its three Sub Groups, constituted to consider and make recommendations to strengthen the TRAI through suitable legislative amendments, identified two crucial issues relating to Section 11 and Section 14 of the TRAI Act and several incidental issues which had been arising in relation to the TRAI Act. The Sub Group also suggested the establishment of a Tribunal under the TRAI Act for adjudicating disputes between a licensor and licensee, between two or more service providers, between a service provider and a group of consumers and also to hear and dispose of any appeals from the direction, decision or order of the Authority.

8.6 The Group's recommendations were accepted by the Government and accordingly, the TRAI (Amendment) Ordinance, 2000 was promulgated on the 24 January, 2000. The TRAI Act was amended on 25 March, 2000 and was deemed to have come into force from 24 January, 2000. Through the amendment, an Appellate Tribunal known as the Telecom Disputes Settlements and Appellate Tribunal (TDSAT) was set up under Section 14 of the TRAI Act, 1996. The TDSAT came into existence on 29 May, 2000.

8.7 Under the amended Act, a clear distinction was made between the recommendatory and the regulatory functions of the Authority as envisaged under sub-section (1) of section 11 of the Act. It has also been made mandatory for the Government to seek the recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of section 11(1)(a) of the Act, namely:

- (i) 'need and timing for introduction of new service provider; and
- (ii) terms and conditions of licence to a service provider'.

8.8 The composition of the Authority was also changed. The Authority now consists of a Chairperson and not more than two whole-time members and not more than two part time members to be appointed by the Government. *Vide* Notification dated 9 January, 2004, the Government notified the Broadcasting Services and Cable Services to be Telecommunication Service and TRAI came to deal with these services too.

8.9 While reviewing the working of the TRAI, the Committee took note of the provisos to Section 11(1) of the amended TRAI Act, 1997 which are reproduced as under:

Provided that the recommendations of the Authority specified in the clause (a) of this sub-section shall not be binding upon the Central Government:

Provided further that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of clause (a) of this sub-section in respect of new licence to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the date on which that Government sought the recommendations:

Provided also that the Authority may request the Central Government to furnish such information or documents as may be necessary for the purpose of making recommendations under sub-clauses (i) and (ii) of clause (a) of this sub-section and that Government shall supply such information within a period of seven days from receipt of such request:

Provided also that the Central Government may issue a licence to a service provider if no recommendations are received from the Authority within the period of specified in the second provision or within such period as may be mutually agreed upon between the Central Government and the Authority.

Provided also that if the Central Government having considered that recommendation of the Authority comes to a prima facie conclusion that such recommendation cannot be accepted or needs modifications, it shall, refer the recommendations back to the Authority for its reconsideration, and the Authority may within fifteen days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference made by the Government. After receipt of further recommendation, if any, the Central Government shall take a final decision.

8.10 On the question of implementation of TRAI's recommendations, the observations of the Supreme Court in the case of Cellular Operators Association of India Vs. Union of India & others reported in (2003) 3 SCC 186 is reproduced below:

"Due weightage has to be attached both to the recommendations of TRAI which consists of an expert body ..."

8.11 On the similar lines, the TDSAT in its judgment dated 27 September, 2003 in Petition No. 5/2002, while discussing the role, functions and duties of TRAI as also the manner in which Government is required to act on the recommendations of TRAI, held as under:

"..... To us it appears that we have to adopt a constructive and purposeful approach in interpreting the provisions of Section 11 and we cannot accept an argument which strikes at the bottom of very existence of the Authority. It is undeniable that Authority is an expert body constituted under the Act and it has been held to be so by the judgment of the Supreme Court in the Case of Cellular Operators Association of India & Ors. Vs. Union of India & Ors. — (2003) 2 SCC 186."

"..... When the Authority makes recommendations it does so only after following the set transparent procedure. Even if nothing has been mentioned as to how the recommendations are to be considered by the Central Government when the Central Government does not accept those recommendations, it has to be seen how the Central Government has considered those recommendations and the reasons therefore not to accept the same with certain modifications.....".

CHAPTER IX

SPECTRUM—A PRECIOUS NATIONAL ASSET

9.1 'Radio Frequency Spectrum' basically refers to the collection of various types of electromagnetic radiations of different wavelengths. Spectrum is a radio frequency on which all communication signals travel. Radio Frequency Spectrum is the entire range of wavelengths of electromagnetic radiation, which is used as carrier of wireless transmission and thus, a basic requirement for providing wireless services. It is a finite but non-consumable global natural resource and commands high economic value in the telecommunication sector. The spectrum is used and not consumed, and it is wasted if not optimally and efficiently used. It cannot be owned but used and shared amongst various countries, services, users, technologies, etc. without any element of exclusiveness. Radio communication networks are like global society necessitating appropriate discipline.

9.2 Utilization (assignment of frequency) of these resources follows laws of physics and is governed by international treaties notably, the Constitution, the Convention and Radio Regulations of the International Telecommunication Union (ITU). India falls in ITU Region 3.

9.3 The radio frequency spectrum is a precious national asset which is shared by various Government and private user organizations like defence, police, intelligence and other security agencies, public telecommunications, broadcasting, railways, public utility organizations, oil and electricity grids, atomic energy, mining and steel, shipping and airlines, and so on as well as private and public telecom operators, for variety of applications mainly, public telecom services, aeronautical and maritime safety communications, radars, seismic surveys, rocket and satellite launching, earth exploration, natural calamities forecasting, etc.

9.4 As the mobile services require spectrum, sufficient spectrum is required to be made available for successful implementation of wireless based telecom infrastructure. In this connection, the Government formulated the National Frequency Allocation Plan (NFAP) which is based on the International Radio Regulations for optimal use of the scarce resource. The NFAP forms basis for development and manufacturing of wireless equipment and spectrum utilization in the country. The National Frequency Allocation Plan was established in 1981 and has been modified from time to time. The latest revision to the National Frequency Allocation Plan was done in the year 2008. The NFAP 2008 has become effective from 1 April, 2009 which is presently in force.

9.5 In India, mobile services which use GSM technology work in the frequency bands of 900 and 1800 MHz and those in CDMA technology work in the 800 MHz band. 800, 900 and 1800 MHz bands were earlier allotted to the defence services for their mobile communication usage. Presently, 25 MHz spectrum in 900 MHz band and 75 MHz in the 1800 MHz band is earmarked for GSM services. For CDMA services, 20 MHz spectrum in the 800 MHz band is earmarked.

A. Spectrum Management

9.6 The **Wireless Planning & Coordination (WPC)** Wing in the Department of Telecommunications deals with the policy of spectrum management, wireless licensing and frequency assignment. WPC was formed in the year 1952. It is headed by the Wireless Adviser to the Government of

India. Under him are the WPC Wing and the field organization known as the Wireless Monitoring Organization. Following are the major functions of the wing:

- (i) Co-ordination and assignment of frequencies to all wireless operations in India;
- (ii) Regulating, planning and administering the usage of frequencies and the radio spectrum in India;
- (iii) Licensing, regulations and associated matters in the field of wireless, except Broadcast Receivers; and
- (iv) Discharging all other responsibilities of the Ministry of Communications as the central coordinating and regulating authority of the country on all matters relating to wireless communications.

9.7 WPC also controls the Wireless Monitoring Organization which is a field organization of the WPC Wing, to provide essential monitoring, inspection and other technical and licensing conditions as also fulfilling the international obligations.

9.8 The WPC Wing is a non user agency of spectrum and is independent to serve the wireless support for spectrum management with a view to ensuring interference-free operation of all wireless networks, ensuring adherence to assigned technical parameters users of the country. The Wing is a specialized Engineering Department and has trained manpower which has knowledge and expertise of all types of wireless systems besides spectrum management.

9.9 Despite having such a strong base, the performance of WPC with the passage of time, has not been very impressive. TRAI also noticed that the expert body needs to be suitably strengthened. In their recommendations on 'Spectrum Management and Licensing Framework' dated 11 May, 2010 (para 6.64), the following suggestions were given by TRAI to strengthen the WPC:

- Upgradation of the post of Wireless Advisor;
- Establishment of unmanned remote monitoring units in central business districts and along coastal areas;
- Enhanced participation of Wireless Monitoring Organisation (WMO)/WPC officials in ITU/APT; and
- Augmentation of manpower in regional offices of Deputy Wireless Advisor.

B. Allocation of Spectrum to Service Providers under NTP 1994 and NTP 1999

9.10 The first two Cellular Mobile Telephone Service (CMTS) Licences issued in the year 1994 in the four Metros (Delhi, Mumbai, Chennai and Kolkata) and in most of the circles in 1995 under the NTP-1994, were awarded through a bidding process. The bids were based on licence fee spread over a ten year licence period but did not include spectrum charges. The spectrum charges were earlier based on number of mobile terminals and allocated spectrum. The charges for spectrum were payable separately and these licensees were charged for spectrum at Rs. 4,800 per voice channel and Rs. 1200 for each additional station. The technology at that point of time was specified as GSM and the licences had a spectrum commitment of 4.5+4.5 MHz and 4.4+4.4 MHz in metros and circles respectively. There was no separate upfront charge for the allocation of spectrum to the licensees. No specific criteria was formulated for allotment of additional spectrum of 1.8 MHz over the initial allotted spectrum of 4.4+4.4 MHz to the first and second operators.

9.11 The major objective of NTP-1994 was to provide telecommunication for all on demand. The aim was to provide the services at affordable and reasonable prices. It was stated in the NTP-1999 that with the proliferation of new technologies and the growing demand for telecommunication services, the demand on spectrum has increased manifold. There was need for a transparent process of allocation of frequency spectrum for use by a service and making it available to various users under specific conditions. Thus it was clear that the objective of the NTP-1999 was access to telecommunications as well as availability of affordable and effective telecommunications for the citizens. It was in this context and background that the telecom policy relating to spectrum pricing evolved since the year 1999. The issue of 'Spectrum Management' was categorically emphasized in the NTP-1999. The important features were the following:

(i) Relocation of existing spectrum and compensation:

- Considering the growing need of spectrum for communication services, there is need to make adequate spectrum available.
- Appropriate frequency bands have historically been assigned to Defence & others and efforts would be made towards relocating them so as to have optimal utilization of spectrum. Compensation for relocation may be provided out of spectrum fee and revenue share levied by Government.
- There is a need to review the spectrum allocations in a planned manner so that required frequency bands are available to the service providers.

(ii) There is need to have a transparent process of allocation of frequency spectrum which is effective and efficient. This would be examined further in the light of International Telecommunication Union (ITU) guidelines. For the present, the following course of action shall be adopted:

- Spectrum usage fee shall be charged.
- Setting up an empowered Inter-Ministerial Group to be called as Wireless Planning Coordination Committee (WPCC) as part of the Ministry of Communications for periodical review of spectrum availability and broad allocation policy.
- Massive computerization in the WPC Wing will be started during the next three months time so as to achieve the objective of making all operations completely computerized by the end of year 2000.

9.12 Keeping in view the growth prospective in telecom sector, Tenth Five Year plan (2002-2007) emphasized the need to treat the telecom sector as an infrastructure sector till next decade or so till the required tele-density is achieved and the necessary support network is created. It was indicated in the Tenth Plan that the spectrum policy needs to be promotional in nature; revenue considerations playing a secondary role. It emphasized the need for policy governing spectrum allocation and licensing to be such that the scarce resource was used optimally and did not become a constraint for growth. It was further emphasized that the spectrum pricing need to be based on relative demand and supply over space and time in a dynamic manner. Opportunity cost to reflect the relative scarcity of the resource in a given situation.

9.13 Under the NTP-1999 the fixed Licence fee regime was changed to revenue sharing regime. In terms of spectrum management, the policy underlined that the spectrum should be utilized efficiently, economically, rationally and optimally. Since 1 August, 1999 the spectrum charges were linked to percentage of AGR.

9.14 After the migration of the CMTS Operators to the revenue share regime, the Department of Telecommunications issued fourth cellular operator Licences in the year 2001 through competitive bidding process. The Licensees were allotted 6.2+6.2 MHz spectrum straight way.

9.15 In terms of guidelines announced on 5 January, 2001 by Department of Telecommunications Licensing Cell (VAS) for issue of licences to 4th cellular operators, regarding spectrum it was provided that licensee was to pay licence fee annually @ 17% of Adjusted Gross Revenue (AGR) for metro cities and Telecom Circles (the exception being 10% for Andaman & Nicobar Circle). This fee was based on the TRAI recommendations. Licence fee as revenue share included rent for the licence and also contribution towards (i) USO; (ii) R&D administration and regulation; and (iii) 2% revenue share towards WPC charges covering royalty payment for the use of cellular spectrum up to 4.4 MHz+4.4 MHz. Any additional bandwidth if allotted was to attract additional licence fee as revenue share (typically 1% additional revenue share if bandwidth allocated is up to 6.2 MHz+6.2 MHz in place of 4.4 MHz+4.4 MHz).

9.16 On 22 September, 2001 WPC Wing issued an order requiring cellular licensees to pay spectrum charges with effect from 1 August, 1999 (the cut off date of change over to revenue share regime of NTP-1999) on revenue share basis @2% of AGR annually. The said revenue share covered royalty payment for the use of cellular spectrum upto 4.4 MHz+4.4 MHz and any additional bandwidth, if allotted subject to availability and justification, attract additional royalty and licence fee as revenue share (typically 1% additional revenue share if bandwidth allocated is up to 6.2 MHz+6.2 MHz in place of 4.4 MHz+4.4 MHz).

9.17 The representatives of Cellular Operators Association of India (COAI) made requests to the Department of Telecommunications in 2001 for allocating additional spectrum particularly in Delhi and Mumbai service areas beyond 6.2 MHz+6.2 MHz. Department of Telecommunications constituted a Technical Committee to look into the matter and give its report. The Technical Committee gave its report on 21 November, 2001 recommending therein that 6.2 MHz spectrum was sufficient for a subscriber base of about 9 lakh per operator in service areas like Delhi and Mumbai for another 24-30 months. The Committee also recommended to levy incremental charges for additional spectrum. A gist of the recommendations of the Technical Committee is as under:

- (i) *Presently allotted 6.2 MHz+6.2 MHz spectrum is sufficient for a subscriber base of about 9 lakhs per operator in service areas of high penetration like Delhi and Mumbai by use of tighter use pattern (3/9) and advanced radio frequency features like synthesized frequency hopping and antenna diversity, etc. The spectrum can support much higher subscriber base in Telecom Circles.*
- (ii) *The present allocated 6.2 MHz+6.2 MHz in Delhi and Mumbai Metros will be sufficient for another 24 to 30 months, if the networks are planned optimally.*
- (iii) *Metro Cellular Operator reported some congested pockets where the subscriber base was heavy. No reliable data could be obtained from any source about number of subscribers and traffic in such congested areas. However, the Committee felt that subscriber capacity could be further enhanced if Micro and Pico Cells are used, etc.*
- (iv) *Additional frequency spectrum of 2 MHz may be allotted after one year to each Delhi and Mumbai Service Area Operators either in 900 MHz or 1800 MHz band based on requirement so that operators may plan their networks optimally in advance. This additional spectrum should be sufficient for three years at the present rate of growth.*
- (v) *Allotment of additional frequency spectrum of 2 MHz is not recommended for Telecom Circles and other Metro Operators for at least two to three years.*
- (vi) *To encourage optimal and efficient use of spectrum, suitable incremental spectrum charges at a higher rate should be levied.*

9.18 On 10 January, 2002, Shri Shyamal Gosh, recorded a note highlighting the issue of optimal utilization of spectrum and allocation of additional spectrum to the service providers based on the subscriber base criteria. It was observed by him that as per the report of the Telecom Engineering Centre, which had just been received, there was no immediate need for additional spectrum if the allocated spectrum was optimally utilized with better network configuration by decreasing the cell size and decreasing the distance between these cell sites to about half a kilometer. It was further stated in the note that, with proper planning, it would be possible to sustain even a larger subscriber base with the existing allocation of spectrum.

9.19 On 31 January, 2002, the then DDG (VAS) put up a note mentioning therein that a consensus had emerged after discussions that additional spectrum to the extent of 1.8 MHz (paired) beyond 6.2 MHz in 1800 MHz band might be released on case to case co-ordination basis to the Operators by charging additional 1% of revenue share after customer base of 4-5 lakh was reached. On the said note, Shri Shyamal Ghosh, the then Secretary, Department of Telecommunications agreed to the reduced subscriber base from 9 lakh to 4-5 lakh for allocation of additional spectrum and recommended to allocate additional spectrum beyond 6.2 MHz upto 10 MHz by charging only additional 1% of AGR till 10 MHz.

9.20 On the aforesaid note, concurring with the recommendation of the then Secretary, the final approval was accorded by the then Minister of Communications & Information Technology on 31 January, 2002 itself. Accordingly, a general order was issued and circulated on 1 February, 2002 to all the Cellular Mobile Telecom Service (CMTS) Operators and instant allotment of additional spectrum was given to the operators for Delhi and Mumbai Metro circles.

9.21 It has been pointed out in Justice Shiv Raj V. Patil Report that the officials of Access Services (AS) Wing and WPC Wing had informed the one man Committee that there is no office memorandum detailing comprehensively the procedures to be followed in processing applications for grant of access service Licences or allotment of spectrum. It was stated by the officials that procedures followed during the said period were based on certain guidelines and orders issued from time to time and that in the absence of guidelines and orders, certain practices have been followed.

9.22 In the context of the Tenth Plan document, on 28 January, 2003 the Minister of Communications & Information Technology constituted a Technical Committee on efficient use of spectrum by cellular services under the chairmanship of Shri R. Lalwani, the then Advisor (Technology) with the representatives of Telecommunication Engineering Centre (TEC) and the representatives of COAI and Association of Basic Telecom Operators (ABTO) as its members, having the following terms of reference:

- (i) Examine the current utilization of assigned bandwidth by various Cellular Operators;
- (ii) Examine network design practices followed by various Cellular Operators from the point of optimal utilization of assigned bandwidth; and
- (iii) Carry out comparison with internationally used norms and practices in this regard.

9.23 The Committee submitted its recommendations on 29 July, 2003 which included criteria for allotment of spectrum beyond 8 MHz + 8 MHz on subscriber linked criteria amongst others. The Committee referred to the general international practice of cellular operators being assigned the total spectrum that would be made available to them right at the time of issuing the cellular licences, which would afford them the flexibility of designing their networks in the most optimal manner. However, keeping in view the severe constraint on availability of spectrum in the country, the Committee recommended allocation of spectrum based on subscriber linked

criteria. Additional spectrum beyond 6.2+6.2 MHz was to be given once the number of subscribers reached 5 lakh in a service area; beyond 8+8 MHz on crossing 10 lakh; and beyond 10+10 MHz on reaching a subscriber base of 15 lakh. It also recommended earmarking of additional spectrum beyond 8+8 MHz (upto 10+10 MHz) in 1800 MHz band only. The service providers were allowed to apply for additional spectrum once they reached 80% of the subscriber base possible with the already allocated spectrum.

9.24 The Minister approved these recommendations on 18 August, 2003 without there being either consideration by Telecom Commission or recommendations of the TRAI. Allotment of additional spectrum beyond 8 MHz was made as approved by the Minister. This order was not notified to the existing operators or to the public. The order dated 1 February, 2002 prescribing spectrum charges beyond 6.2 MHz + 6.2 MHz @ 4% of AGR was applicable to allotment of spectrum upto 10 MHz. Thus, it was decided through that order that the spectrum from 6.2 MHz upto 10 MHz would be charged @ 1% of the AGR.

9.25 TRAI gave its recommendations on 27 October, 2003 on Unified Licensing Regime. An important recommendation with regard to spectrum pricing in para 7.33 was: "The Authority is not in favour of high spectrum pricing, since such a regime will make the services more expensive and the desired growth will not take place in telecommunications."

9.26 The Group of Ministers on Telecom Matters constituted on 10 September, 2003, after considering recommendations of TRAI dated 27 October, 2003, submitted its recommendations on 30 October, 2003 which were accepted by the Cabinet on 31 October, 2003. The Cabinet decision provided *inter-alia* :

- (i) Adequate spectrum be made available for unimpeded growth of telecom services, modalities for which will be jointly worked out by WPC of Department of Telecommunications and Defence Services.
- (ii) Department of Telecommunications and Ministry of Finance would discuss and finalize spectrum pricing formula, which will include incentive for efficient use of spectrum as well as disincentive for sub-optimal usages.
- (iii) Allotment of additional spectrum be transparent, fair and equitable avoiding monopolistic situation regarding spectrum allotment usage.
- (iv) Long term (5 to 10 years) spectrum requirement along with time frames would also be worked out by Department of Telecommunications.

9.27 On 17 November, 2003 Department of Telecommunications, (VAS Cell) sought opinion of TRAI on the following spectrum related issues viz.: (i) efficient utilization of spectrum; (ii) spectrum pricing; and (iii) spectrum allocation procedure. TRAI on 19 November, 2003 opined that in the interim period pending its recommendations, spectrum to new licensees could be given as per the existing terms and conditions. Mean while, Telecom Commission in its meeting held on 19 March, 2004 considered the proposal submitted by WPC Wing prescribing spectrum charges beyond 10 MHz as under:

- (i) For additional spectrum of 2.5 MHz or part thereof beyond 10 MHz if assigned to a mobile service operator in Metro and other telecom circles, an additional charge of 1% of AGR will be levied, thus making total spectrum charge to be paid by such operator as 5% of AGR.
- (ii) Additional spectrum of 2.5 MHz or part thereof beyond 12.5 MHz, if assigned in Metro and other telecom circles, an additional charge of 1% of AGR will be levied, thus making total spectrum charges as 6% of AGR.

9.28 On the same day, guidelines on spectrum allotment policy were also approved by Telecom Commission. The wireless users were required to pay for spectrum usage with effect from 1 June, 2004. Based on the same, order dated 15 April, 2004 was issued specifying the charges for additional spectrum beyond 10 MHz + 10 MHz and 12.5 MHz + 12.5 MHz.

C. Spectrum allocation in Unified Access Service Licence (UASL) Regime

9.29 TRAI gave the recommendations on Unified Licensing Regime on 13 January, 2005. In so far as spectrum pricing is concerned, TRAI noted that the spectrum charges have two components— (i) one-time spectrum charges which are a part of one time entry fee and (ii) annual spectrum charges in the form of a percentage of AGR. TRAI indicated that till recommendations on spectrum related issues are given and guidelines are issued by Government, the existing spectrum pricing and allocation procedures will continue (Para 9.1) TRAI also clarified that while finalizing recommendations on spectrum related issues, it would keep the aspect of level playing field in mind. (Para 9.3).

9.30 TRAI gave its recommendations on spectrum related issues on 13 May, 2005. These recommendations were set against the backdrop of reaching a target of 200 million mobile phones by the year 2007. TRAI recommended that there is need to ensure availability of additional spectrum for growth of mobile services so as to achieve the target of 200 million mobile customers in the year 2007. (Para 1.4.7)

9.31 While finalizing the recommendations, TRAI kept in view the objectives of growth of Telecom Services in the country including the rural areas, ensuring efficient spectrum use, ensuring availability of spectrum to service providers, reasonable spectrum price so as to make available Telecom services at affordable price, and level playing field among service providers using various technologies. (Para 1.9.1)

9.32 While dealing with the issue of efficient utilization of spectrum, TRAI observed that “Pricing is also used as a means to promote efficient utilization of spectrum. However, to achieve high growth of mobile services with the penetration in semi urban and rural areas, it is necessary that the services are available at an affordable price. To achieve this, the spectrum price, which is a raw material for wireless services, has to be kept within reasonable limits.” (Para 2.1.4)

9.33 In UASL, the one-time spectrum charges and entry fee for licence have not been separated. In other words, the entry fee includes one time spectrum charge. TRAI recommended that after implementation of Unified Licence Regime as recommended by TRAI and subject to approval by Government of India, Authority recommends that the one time spectrum charges would be equal to UASL entry fee in that services area minus the component of registration charge based on the entry fee paid by new BSO (entered in/after 2001), specified by TRAI in its recommendations on Unified Licensing Regime dated 13 January, 2005. (Para 4.3.3)

9.34 On spectrum pricing, TRAI was of the opinion that the policy should consider the requirements of additional spectrum for the existing operators without creating additional financial burden that would make the service costly. Additionally, it has to be ensured that the allocated spectrum is utilized effectively and the approach used for setting the spectrum charges should be simple, transparent and easy to implement. (Para 4.4.10)

9.35 Department of Telecommunications sought comments of the Ministry of Finance on the above Recommendations of TRAI dated 13 May, 2005 on spectrum related issues with particular reference to ‘spectrum pricing’ and ‘spectrum allocation’. The Ministry of Finance (Department of Economic Affairs), vide their letter dated 21 December, 2005 opined as follows:—

“In so far spectrum allocation fees are concerned, the options of Auction/Price Discovery, Base Fee, Revenue Share and a hybrid of base fee and revenue share were examined. Auction/Price Discovery and Base Fee methods are not appropriate, the first due to its

monopolistic and cost implications and the latter as it implies an administratively determined fee without the basis of price discovery. While revenue share would be most logical and transparent and also acceptable to the industry, free allocation of spectrum is in the nature of a subsidy, especially as the resource in question is scarce and in great demand. The hybrid option of a base fee combined with revenue share, therefore, appears to be the most appropriate."

9.36 In the said letter, the Ministry of Finance also recommended that the issues relating to Spectrum should be put up for consideration and appropriate decision by the Committee of Secretaries and thereafter, by a Group of Ministers.

9.37 The issues relating to spectrum were also identified as a significant area for consideration in the Mid Term Appraisal of the Tenth Five Year Plan by the Planning Commission. Some of the important observations therein were as follows:—

- (i) *Spectrum is the scarcest of resources. Available spectrum has already been utilized in major urban centres, with a result that spectrum is tending to be a major constraint in maintaining the high growth rate of cellular mobile services in the urban areas. The spectrum availability needs to be adequately increased by both more efficient utilization by the existing operators and services and by release of spare spectrum by modernization and upgradation of equipment.*
- (ii) *The spectrum currently occupied by Defence and some other agencies may have to be released for this purpose. An action plan needs to be drawn up and implemented in a time-bound manner for getting more spectrum vacated from Defence and other agencies/users.*
- (iii) *The task of getting more spectrum vacated has been going on through inter-ministerial discussions for the last several years. However, we have reached such a stage that these efforts have to be translated into a normalized institutional arrangement for vacation of spectrum in the form of a very high level group (Group of Ministers) to have the action plan implemented.*
- (iv) *The basic requirement from this Group will have to make necessary funds available to the Ministry of Defence in particular for replacement of analogue/old equipments with more spectrally efficient equipment.*

9.38 Taking note of the above observations of the Planning Commission, a note was initiated in the Prime Minister's Office, which identified that high level priority interventions were required to resolve issues like vacation of spectrum, upgrading the technology and equipment of existing users like Defence and funding of such upgradation delineating basis for vacation of spectrum and the basis for transparent and equitable resolution of disputes regarding spectrum allocation among service providers using different technology standards. It was felt that such issues would require examination at a high level as they have inter-Ministerial implications involving the Department of Telecommunications, Ministry of Defence, Planning Commission and the Ministry of Finance. Accordingly, it was proposed that a Group of Ministers may be constituted to look into the gamut of issues involved therein. It was also proposed that Terms of Reference may be worked out in consultation with the Department of Telecommunications and the Planning Commission for a Group of Ministers comprising Minister of Defence, Minister of Communications & Information Technology, the Minister of Finance, Minister of Law & Justice and the Deputy Chairman, Planning Commission. The proposal was approved on 20 November, 2005.

9.39 Thereafter, the process of consultation with both the Planning Commission and the Department of Telecommunications was initiated. In the documents furnished to the Committee, it has been noted that the then Minister of Communications & Information Technology wrote a

letter to the Prime Minister *vide* D.O. letter dated 11 January, 2006 *inter-alia* suggesting that the proposed Group of Ministers should focus on the aspect of vacation of spectrum by Defence Services and early Migration of Prasar Bharti to Digital Terrestrial Broadcasting. While leaving other issues such as spectrum allocation, 3G, etc. as these are solely within the purview of the Department of Telecommunications and can be well handled by that Department. In the meantime the Minister of Communications and Information Technology also personally met the Prime Minister and had impressed that the Group of Ministers needs to look only into vacation of spectrum and raising resources to enable the Defence Services/Para-Military Forces to vacate spectrum and issues regarding spectrum allocation policy and related issues should be left under the domain of the Ministry of Communications & Information Technology or the Telecom Regulatory Authority of India as per Allocation of Business Rules.

9.40 The draft Terms of References were accordingly drawn up on 11 February, 2006 in the Prime Minister's Office. The Cabinet Secretariat constituted a Group of Ministers *vide* their Notification dated 23 February, 2006. The Group of Ministers included the following:—

- (i) Minister of Defence
- (ii) Minister of Home Affairs
- (iii) Minister of Finance
- (iv) Minister of Information and Broadcasting
- (v) Minister of Communications and Information Technology
- (vi) Deputy Chairman, Planning Commission (as special invitee)

9.41 The Group of Ministers had the following Terms of Reference:

- (i) Determine the quantum of additional minimum and optimum requirement and identify frequency bands for major users, *viz.*,
 - (a) Cellular-mobile services, and
 - (b) Defence and paramilitary forces, for both (i) short term (*i.e.*, less than one year) and (ii) medium term (*i.e.*, less than five years)
- (ii) Based on current occupation of Spectrum, clearly delineate a transition path for enabling users like defence and paramilitary forces to migrate to the more appropriate Spectrum slots identified at (i) above, keeping in mind technology upgradation, nature of usage and procurement procedures. The transition path should clearly lay down phasing and sequencing of steps and a feasible time-frame to enable step-by-step monitoring. It would be desirable that this exercise leads to the delineation of an exclusive band for Government/Defence purposes.
- (iii) Correspondingly, suggest a transition path for cellular and mobile services to step into the Spectrum bands vacated by security forces and allocated to them.
- (iv) Estimate quantum of funds and resources required to enable security forces to procure state-of-the-art equipment, technologically appropriate for the assigned Spectrum. Estimate year-wise fund flow requirements, to bring about a smooth transition.
- (v) Suggest a Spectrum Pricing Policy and examine the possibility of creation of a Spectrum Relocation Fund. Indicate likely source and quantum of resources so generated and guidelines for the operation of the fund. Spectrum Pricing Policy may, as far as possible, aim at revenues fully offsetting the cost of vacation of Spectrum.
- (vi) Suggest guidelines to encourage and incentivize introduction of Spectrum efficient technologies.

9.42 In the meantime, on 28 February, 2006, the then Minister of Communications & Information Technology wrote a letter to the Prime Minister, recalling his meeting with the Prime Minister held on 1 February, 2006 and stated that the issue of the Group of Ministers, relating to vacation of spectrum by the Defence had been discussed. He reiterated that the GoM was to focus only on the issue of vacation of spectrum. He expressed his surprise over the fact that the Group of Ministers constituted has much wider Terms of Reference, some of which he felt impinged upon the work normally to be carried out by his Ministry. He accordingly requested that the Terms of Reference may be modified. The said letter annexed the following Terms of Reference as desired by the Ministry:—

- (i) To recommend measures to make available adequate additional spectrum for growth of telecom sector to achieve high tele-density.
- (ii) To make necessary funds available to the Ministry of Defence in particular for replacement of analogue/old equipment with alternate systems or more spectrally efficient equipment.
- (iii) To recommend measures for vacation of the spectrum in a time bound manner.
- (iv) To suggest measures for early introduction of efficient digital terrestrial broadcasting for vacation of spectrum for other services in line with international practices.

9.43 On 10 November, 2006 the Cabinet Secretariat issued a notification regarding reconstitution of the Group of Ministers on vacation of spectrum and *inter-alia* noted that the Terms of Reference of the Group of Ministers will remain the same as notified *vide* Memorandum dated 23 February 2006. The then Minister of Communications & Information Technology taking note of the Cabinet Secretariat Memorandum again wrote a letter to the Prime Minister on 16 November, 2006 pointing out that while the composition of the Group of Ministers had been revised he recalled the discussion he had with the Prime Minister on the matter of Terms of Reference of the Group of Ministers. He also stated that in consonance with the discussion the Terms of Reference prepared by his Ministry were enclosed and sought approval to the same to enable vacation of the required spectrum from major users for the growth of the telecom sector. The draft Terms of Reference as enclosed in the letter are as follows:—

- (i) To recommend measures for vacation of adequate additional spectrum by the existing large users such as Defence, Space, Para-Military, etc. in a time bound manner for the growth of mobile telephony and broadband sectors in the country, in the overall national interest;
- (ii) To recommend alternate frequency bands/media for migration of such existing usages, keeping in mind the nature of technology upgradation;
- (iii) To estimate the resources required by the concerned Ministries and their phasing, for putting in place necessary alternate systems by such users to enable migration; and
- (iv) To suggest measures for early introduction of spectrum efficient digital terrestrial broadcasting for vacation of spectrum for other services in line with international practices.

9.44 After consideration the Terms of Reference as suggested by the Minister of Communications & Information Technology were approved as it is on 26 November, 2006 and were notified by the Cabinet Secretariat on 7 December, 2006.

9.45 On 28 March, 2007 the then Finance Secretary in a letter to the Secretary, Department of Telecommunications *inter-alia* citing the Cabinet Secretariat OMs dated 23 February, 2006 and 7 December 2006, wrote that, "the Terms of Reference of the Group of Ministers did not

include issues relating to technology neutral spectrum allocation and spectrum pricing which are of immense importance for further growth of telecom in the country. The methodology to be followed for allocation of spectrum and its pricing would logically follow the vacation of spectrum which is one of the issues included in the Terms of Reference. A sound policy of spectrum allocation and pricing will not only result in optimum utilization of spectrum but would also have revenue implication". He further, requested that since the Group of Ministers would be serviced by the Department of Telecommunications they should ensure that these issues are included in the Terms of Reference for the Group of Ministers.

9.46 In response to the above letter, on 2 April, 2007 the Secretary, Department of Telecommunications wrote to the Finance Secretary that Department of Telecommunications had proposed a draft Terms of Reference for the Group of Ministers in January 2006, which focused on the issues relating to vacation of spectrum in a time bound manner for growth of telecom sector, making available funds for relocation of existing systems and use of digital technology. Further, he added that the Terms of Reference issued by Cabinet Secretariat in February 2006 included certain other issues, including spectrum pricing, which are within the normal work carried out by his Ministry. He further stated that the Minister of Communication and Information Technology had written to the Prime Minister accordingly in February 2006 requesting that the Terms of Reference may be modified as suggested in the original proposal. Secretary, Department of Telecommunications accordingly stressed that "I hope this clarifies the matter".

9.47 Thereafter, the then Finance Secretary, *vide* letter dated 19 April, 2007 also wrote to the Cabinet Secretary and reiterated the issues raised by him in his letter addressed to the Secretary, Department of Telecommunications on 28 March, 2007 and informed about the views of the Department of Telecommunications in the matter. He also stressed before the Cabinet Secretary that spectrum pricing and allocation have far reaching consequences for the economy and needed to be debated. The contention of the Department of Telecommunications that these issues are within its normal work is not entirely correct. He also stated that since these issues would have economic and financial ramifications, the Department of Economic Affairs felt that such issues need to be discussed in the Group of Ministers. The Cabinet Secretariat *vide* its Office Memorandum dated 17 May, 2007 suggested to the Secretaries of Department of Economic Affairs and the Department of Telecommunications that both the Departments may discuss and resolve the matter at their level and thereafter the Cabinet Secretariat may be advised about the decisions taken in the matter.

9.48 In follow up of the advise of the Cabinet Secretary, the Secretary Department of Economic Affairs, *vide* letter dated 6 June, 2007 addressed to the Secretary, Department of Telecommunications, stated that it had been agreed to include 'Technology Neutrality' in the Terms of Reference of the Group of Ministers. However, the Secretary Department of Telecommunications had expressed disinclination to include 'Spectrum Pricing' in the Terms of Reference. The Secretary, Department of Economic Affairs went on to state that the matter had been discussed at the level of the Finance Minister and that the Department of Economic Affairs was of the view that for optimum utilization of spectrum, a sound policy on spectrum pricing was necessary. He added that the methodology to be followed for spectrum pricing would logically follow the vacation of spectrum which is the main task of Group of Ministers. Thereafter, in the letter it was requested that the matter may be reconsidered for inclusion of spectrum pricing in the Terms of Reference for the Group of Ministers.

9.49 In his reply dated 15 June 2007 the Secretary, Department of Telecommunications gave a detailed reply to the Secretary, Department of Economic Affairs as follows:—

' ... As regards the issue of pricing of the spectrum, the then Minister of Communications and IT had written to the Hon'ble Prime Minister on January 11, 2006 that one major bottle-neck in the sustained growth of telecom sector is the availability of and not

allocation of spectrum. The GoM should therefore focus its attention on the vacation of spectrum by the Defence and other agencies. The Minister had again written to the Hon'ble Prime Minister on February 28, 2006 that some of the Terms of Reference (ToR) impinge upon the work that is normally being carried out by this Ministry.... The spectrum pricing and charges for the use of the spectrum is a dynamic issue. It depends, *inter-alia*, on the region of use, the type of telecom service, the band of the spectrum used, etc. Hence, pricing of spectrum cannot be fixed for a long time to come at any stage. It is to be reviewed and considered from time to time in the context of the changing technology and international best practices in consultation with Telecom Regulatory Authority of India...The Telecom Regulatory Authority of India under its statutory provisions, provides recommendations on, among other matters, 'Efficient Management of available spectrum'. Appropriate pricing of spectrum is one of the important tools to ensure optimum and efficient use of the scarce resource. The Government has been consulting Telecom Regulatory Authority of India on several spectrum issues for different wireless based services/ systems including new technologies. It may be mentioned that Telecom Regulatory Authority of India has recently given its recommendations on spectrum allotment and pricing of 3G services. This matter was discussed in a meeting with Minister of Communications and IT and it was felt that the Terms of Reference may now remain as they were issued in December last year.'

9.50 Thereafter, the Department of Economic Affairs neither pursued this matter further with the Department of Telecommunications nor did they reported back to the Cabinet Secretary.

9.51 In the course of evidence, Dr. D. Subbarao, the then Secretary, Department of Economic Affairs when asked whether he took any action on the reply of the Secretary Department of Telecommunications, stated that, "I do not recall having seen (the reply) and the matter rested there. We did not, of course, decide not to pursue the matter, but since there was no reply to my earlier letter, it rested there."

9.52 When asked whether the Department of Telecommunications violated the Cabinet Decision of 2003 by not including the spectrum pricing in the terms of reference of the Group of Ministers, Dr Subbarao replied that, "I think that you cannot really infer that this deletion was inconsistent with the Cabinet decision because as I said earlier, regardless of whether this was there in the Terms of Reference of the Group of Ministers or not, there was an obligation, responsibility and authority for the Ministry of Finance to discuss financial dimensions with the Department of Telecom, which we did."

9.53 To a specific query to the then Cabinet Secretary, Shri K.M. Chandrasekhar, on whether after having taken over the charge on 14 June, 2007, he had taken any further action in the matter which was initiated by his predecessor, stated in a written reply that no further communication was received from the Ministry of Finance regarding inclusion of spectrum pricing in the Terms of Reference of the Group of Ministers. He concluded that this matter was also never raised to me by the Secretary, Department of Economic Affairs or the Secretary, Department of Telecommunications. No further action was, therefore, called for.

9.54 After receiving 575 applications for 22 Service Areas, the Department of Telecommunications *vide* their letter dated 13 April, 2007, requested TRAI to furnish their recommendations on the issue of limiting the number of access providers in each service area and review of the Terms and Conditions in the access provider licence.

9.55 TRAI gave its recommendations on 'Review of Licence Terms and Conditions and capping on number of access providers' dated 28 August, 2007. These recommendations covered among other issues, Spectrum management review covering the following areas:—

- Measures to increase the spectrum efficiency,

- Spectrum allocation criteria,
- Efficient pricing of spectrum and
- Need for improving the spectrum management.

9.56 On spectrum allocation, TRAI analyzed that the existing subscriber base criteria suffered from 'several limitations and problems', and recommended that the Department of Telecommunications should examine delinking of spectrum from the licence and specify appropriate licence fee for UAS Licensees who do not wish to utilize the spectrum (Para 2.55). In Para 2.59 the Authority advocated tightening of subscriber base criteria and suggested enhanced subscriber base criteria as per the following table (Para 2.62):—

GSM subscriber base criteria (millions of subscribers)

Service Area	2X6.2 MHz	2X8 MHz	2X10 MHz	2X12.4 MHz	2X15 MHz
Delhi/Mumbai	0.5	1.5	2	3.0	5
Chennai/Kolkata	0.5	1.5	2	3.0	5
A	0.8	3	5	8	10
B	0.8	3	5	8	10
C	0.6	2	4	6	8

CDMA subscriber base criteria (millions of subscribers)

Service Area	3rd Carrier (2X3.75MHz)	4th Carrier (2X5 MHz)	5th Carrier (2X6.25 MHz)	6th Carrier (2X7.5 MHz)
Delhi/Mumbai	0.5	2	3.0	5
Chennai/Kolkata	0.5	2	3.0	5
A	0.8	5	8	10
B	0.8	5	8	10
C	0.6	4	6	8

9.57 TRAI also dealt with the question of a new entrant in paragraphs 2.78 and 2.79, which read as follows:—

2.78 "As far as a new entrant is concerned, the question arises whether there is any need for change in the pricing methodology for allocation of spectrum in the 800, 900 and 1800 MHz bands. Keeping in view the objective of growth, affordability, penetration of wireless services in semi-urban and rural areas, the Authority is not in favour of changing the spectrum fee regime for a new entrant. Opportunity for equal competition has always been one of the prime principles of the Authority in suggesting a regulatory framework in telecom services. Any differential treatment to a new entrant vis-à-vis incumbents in the wireless sector will go against the principle of level playing field. This is specific and restricted to 2G bands only i.e. 800, 900, and 1800 MHz. This approach assumes more significance particularly in the context where subscriber acquisition costs for a new entrant is likely to be much higher than for the incumbent wireless operators."

2.79 "In the case of spectrum in bands other than 800, 900 and 1800 MHz i.e. bands that are to be allocated, the Authority examined various possible approaches for pricing and has come to the conclusion that it would be appropriate in future for a market based price discovery systems. In response to the consultation paper, a number of stakeholders have also strongly recommended that the allocation of spectrum should be immediately delinked from the licence and the future allocation should be based on auction. The Authority in its recommendation on "allocation and pricing of spectrum for 3G and Broadband Wireless Access Services" has also favoured auction methodology for allocation of spectrum for 3G and BWA services. It is therefore recommended that in future all spectrum excluding the spectrum in 800, 900 and 1800 bands should be auctioned so as to ensure efficient utilization of the scarce resource. In the 2G bands (800 MHz/900 MHz/1800 MHz), the allocation through auction may not be possible as the service providers were allocated spectrum at different times of the licence and the amount of spectrum with them varies from 2x4.4 MHz to 2x10 MHz for GSM technology and 2x2.5 MHz to 2x5 MHz in CDMA technology. Therefore, to decide the cut off after which the spectrum is auctioned will be difficult and might raise the issue of level playing field".

9.58 From the above, it is clear that TRA's specific recommendation was that spectrum in 800, 900 and 1800 MHz bands (popularly known as 2G Bands) should not be subject to auction.

9.59 TRAI, however, recommended in the above Report that spectrum usage charges for spectrum upto 2x8 MHz be kept same and the charges for spectrum beyond 2x8 MHz be enhanced by 1% of AGR in various slabs.

9.60 Department of Telecommunications continued with the allocation of additional spectrum based on the subscriber base criteria which was further changed *vide* Department orders dated 29 March, 2006, 1 December, 2006 and 17 January, 2008. Following are the details in this regard:

Dated the 29 March, 2006

Service Area	Minimum Subscriber base (in Lakh) required for allotment of different amounts of GSM Spectrum					
	4.4 MHz	6.2 MHz	8 MHz	10 MHz	12.4 MHz	15 MHz
Metro Service Area Delhi & Mumbai	No criteria*	3	6	10	16	21
Chennai & Kolkata	No criteria*	2	4	6	10	13
Telecom Circles as service area						
Category 'A' Circle	No criteria*	4	8	14	20	26
Category 'B' Circle	No criteria*	3	6	10	16	21
Category 'C' Circle	No criteria*	2	4	6	9	12

*Initial allotment for roll out of the network

Dated the 29 March, 2006

Service Area	Minimum Subscriber base (in Lakh) required for allotment of CDMA carriers of nominal 1.25 MHz bandwidth each	
	5th Carrier	6th Carrier
Metro Service Area		
Delhi & Mumbai	16	21
Chennai & Kolkata	10	13
Telecom Circles as service area		
Category 'A' Circle	20	26
Category 'B' Circle	16	21
Category 'C' Circle	9	12

Dated the 1 December, 2006

Service Area	Minimum Subscriber base (in Lakh) required for allotment of CDMA carriers of nominal 1.25 MHz bandwidth each			
	1st Carr.	2nd Carr.	3rd Carr.	4th Carr.
Metro Service Area Delhi & Mumbai	No criteria*	—	3	10
Chennai & Kolkata	No criteria*	—	2	6
Telecom Circles as service area				
Category 'A' Circle	No criteria*	—	4	12
Category 'B' Circle	No criteria*	—	3	10
Category 'C' Circle	No criteria*	—	1.5	5

*Initial allotment for roll out of the network

17 January, 2008

Service Area	Subscriber base (in Lakh) supported by GSM spectrum in MHz. (eligibility for allotment of next step)									
	2X4.4	2X6.2	2X7.2	2X8.2	2X9.2	2X10.2	2X11.2	2X12.2	2X13.2	2X14.2 2X15@
Metro Service Area	5	15	18	21	26	32	40	48	57	65
Telecom Circles as Service Area	8	30	41	53	68	82	90	98	107	116
Category 'A' & 'B'										
Category 'C' circles	6	20	31	42	52	62	70	78	87	96

@ Present upper limit for spectrum allotment.

9.61 The details of the allotment of total spectrum to each service provider indicating the additional spectrum allocated from 2002 till 2009 is given in Appendix-I.

9.62 The additional spectrum as indicated in Appendix- I was allocated to the service providers by Department of Telecommunications on continuous basis from 2001 onwards. However, the contracted spectrum of 4.4 MHz (paired) was always granted to the licensees along with the licence and it was not charged separately.

9.63 The Committee note that the Ministry of Finance (Department of Economic Affairs) had specifically raised the issue of charging the contracted spectrum of 4.4 MHz+4.4 MHz separately. Secretary, Department of Economic Affairs had suggested to go for auction for initial spectrum of 4.4 MHz in February, 2008. Department of Telecommunications was not keen to do the same since it had said that it would disturb the level playing field and the present Letters of Intent (LoI) holders who had already paid entry fee were likely to go for litigation. Department of Telecommunications opined that 4.4 MHz is a part of the licence agreement and initial entry fee for licence may be construed as the de-facto price of initial spectrum. However, as of now, the initial spectrum of 4.4 MHz+4.4 MHz is not charged (beyond the normal spectrum usage charges) since there was consensus, at the levels of the Ministers concerned (Minister of Communications & Information Technology and Minister of Finance), in their meeting dated 30 January, 2008 that spectrum beyond the 'start up' levels only should be charged.

D. Efficient utilization of the allocated Spectrum and Spectrum audit

9.64 A detailed note was prepared in the office of the Prime Minister on 6 January, 2008 which highlighted some important facts about the spectrum allocation and its efficient management. It stated that the spectrum available to private industry in India is one of the lowest in the world and yet we already have the largest number of mobile operators. The table below demonstrated the position in some other countries:—

Country	GSM Spectrum licenced to Mobile Operators (MHz paired)	Number of Mobile Operators	Average GSM spectrum per mobile Operator (MHz paired)
France	109.8	3	37
Spain	109	3	36
UK	106.4	4	26
Netherlands	105.2	5	21
Germany	90	4	21
China	65	3	32
Turkey	48	3	16
India		6-8	8-10
Delhi	36		
Mumbai	37.2		
Chennai	28.4		
Kolkata	28.4		

9.65 It can be seen from the above table that the spectrum available to mobile operators in India is much less than in other countries and this is already shared by a much larger number of operators than in other countries. Whereas internationally, GSM operators enjoy spectrum allocations between 15 to 30 MHz, in India it is less than 10 MHz.

9.66 Though, the spectrum allocated to the operators in India is much less than that of other countries in the world, still there are service providers at present, who have excess spectrum while at the same time applications are being received in the Department of Telecommunications on continuous basis for grant of additional spectrum on reaching the required subscriber base. Also, there are 343 new applications pending with the Department which were received upto 1 October, 2007. This situation has arisen mainly due to change of subscriber base criteria for allocation of additional spectrum from time to time in the absence of a comprehensive policy on spectrum allocation.

9.67 Further, the Department of Telecommunications constituted a Committee for Allocation and Pricing of 2G Spectrum under the Chairmanship of Shri Subodh Kumar, Additional Secretary, Department of Telecommunications in June 2008. It had representation from both Government and private sector. The terms of reference of the Committee included:—

- (a) Assessing the demand for spectrum
- (b) Assess availability of spectrum
- (c) Bridging the gap between availability and demand of spectrum by re-farming and other technological innovations
- (d) Methodology for allocation of spectrum
- (e) Efficient usage of spectrum by service providers, and
- (f) Spectrum transfer charges in case of merger and acquisitions.

9.68 The Committee after making a very detailed analysis came to certain conclusions and gave important recommendations. Some important findings of the Committee are detailed below:—

- (i) As the amount of deployed spectrum increases, the capacity of a network to carry traffic increases in greater proportion than the proportion of increase in spectrum. To put it differently, if a given block of spectrum is divided into two, three, or more parts, the total capacity of the network decreases. The incremental increase in spectral efficiency peters out beyond a certain level of spectrum assignment.
- (ii) There is a tradeoff between assigning more spectrum to each operator to enable reduction in network cost and encouraging more operators to ensure sufficient competition.
- (iii) It has become increasingly difficult for an administratively determined Subscriber Linked Criterion for spectrum assignment. This has been accentuated with the fast-changing subscriber profiles, increasing use of data-centric applications, randomized network growth, and rapid technological developments in data transmission. In 2002, the year in which the Subscriber Linked Criterion was announced, there were 4 to 6 operators in every circle. Today we have an average of 15. Any inefficiency in the use of spectrum is sure to be penalized by market forces and does not need to be administratively monitored. The way forward should be to move away from administratively determined criteria to a market-driven approach.

- (iv) The analysis of the data indicate that entry of operators beyond four or five does not significantly increase the competitiveness of the market. The need of the hour is to permit the market to determine the optimum number of operators (subject to the minimum necessary for effective competition) by facilitating spectrum transfer/merger/sharing. Increasing competition beyond certain threshold level might increase per unit costs without significantly reducing markups over cost, resulting higher prices for the consumer. Thus it would be necessary for the government to create an environment that allows consolidation of spectrum without undue windfall gains to licence holders.

9.69 Based on this analysis, the Committee has made several recommendations. The important among those include the following:—

- (a) The start-up spectrum of 4.4+4.4 MHz for GSM and 2.5+2.5 MHz for CDMA is to be assigned to an existing UAS licensee as per current policy as and when spectrum becomes available.
- (b) In case any new UAS licences are issued in future, they should not carry with them any eligibility for start-up spectrum. Since there is no start-up spectrum, the licensees will not have any roll out obligations for wireless access networks.
- (c) No additional spectrum should be assigned in future based on Subscriber Linked Criterion. All assignments of 2G spectrum in future should be through auction. The auction should be limited to UAS/CMTS licensees.
- (d) A UAS/CMTS licensee cannot have spectrum holding of more than 25% of the total assigned spectrum in the 2G band in the Licenced Service Area.
- (e) Since there is scarcity of spectrum, the market may be allowed to discover the optimal number of operators by allowing merger/transfer/sharing of spectrum. Certain conditions and transfer charges have been proposed in order to regulate such mergers and transfers.

9.70 The above recommendations of the internal Committee of the Department of Telecommunications argued for efficient utilization of the allocated Spectrum and pricing based on its scarcity value. The Committee also recommended for de-linking of spectrum from Licence.

9.71 From the data furnished to the Committee, it is seen that Spectrum has been allocated to various service providers up to 10 MHz and in some cases beyond that also. However, neither the Licensors nor the Regulator has ever carried out any assessment regarding optimal utilization of the scarce resource. TRAI in its recommendation dated 11 May, 2010, on 'Spectrum Management and Licensing Framework' had dealt with spectrum audit.

9.72 In this regard, TRAI stated that "while a review of spectrum usage by the current users and refarming, with the objective of freeing unused/inefficiently used spectrum, is eminently desirable, it is equally necessary to ensure that the spectrum allocated to the service providers is being utilized optimally and that the service providers are deploying advanced/latest spectrum efficient techniques. Accordingly, in the consultation paper, the Authority had raised the issue regarding necessity to carryout spectrum audit". (para 1.94)

9.73 TRAI, during the process of consultation observed: "Many stakeholders have suggested/ favoured spectrum audit to be conducted to assess the actual spectrum need and to know whether the spectrum being held is as per need and is being utilized efficiently. In their opinion, audit is a must and there should be a provision of penalty for hoarding of excess spectrum. They are of the opinion that excess spectrum, if found, should be taken back. The other view

was that if spectrum is allocated on market based mechanism, it need not be audited as the market mechanism will ensure its efficient and optimal utilization". (para 1.95)

9.74 Further, TRAI opined that "a number of technological developments are taking place in the sector for efficient utilization of available spectrum. The Authority in its earlier consultations/ recommendations, in the year 2005, 2006 and 2007, related to spectrum, discussed various spectrum efficient techniques like Synthesises Frequency Hopping (SFH), Tighter Frequency Reuse Plan (Cell splitting/electrical down tilt antennae), Discontinuous Transmission (DX), Power control, In-building solution & Micro cells, AMR codec, etc., to utilize the available spectrum more efficiently. It is expected that the service providers use these latest techniques so that they are able to support more traffic per MHz of spectrum, serve more number of customers and remain competitive in the market". (para 1.96)

9.75 Further it has also been viewed by TRAI that "the Authority is of the view that even as efforts are on to make available greater amount of spectrum to meet the increasing telecommunication needs, it is also important on the part of the service providers to utilize the spectrum made available to them in the most efficient manner. Achieving optimal levels of spectral efficiency is the hallmark of any credible spectrum policy. Therefore, it is essential that the utilization of spectrum by the service providers is monitored on a regular basis. In view of the foregoing discussion, it is clear that there is a case for spectrum audit. What needs to be studied in detail are the parameters that can be measured, their measurement, the frequency of measurement, etc." (para 1.97)

9.76 Based on the above conclusions, TRAI has recommended: "The Authority would undertake regular spectrum audit through appropriate means. The details of the audit procedure and frequency of the exercise would be finalized through a separate consultation process." (para 1.98)

APPENDIX I

THE DETAILS OF THE ALLOTMENT OF TOTAL SPECTRUM TO EACH SERVICE PROVIDER INDICATING THE ADDITIONAL SPECTRUM ALLOCATED FROM 2002 TILL 2009

Sl. No.	Date of Allocation of GSM Spectrum	Name of Service Provider	Service Area	Amount of Spectrum Allocated
1	2	3	4	5
1.	17.07.2002	Bharti Airtel Ltd.	Delhi	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 900 MHz.)
2.	17.07.2002	Hutchison Max. Telecom Ltd. (Vodafone)	Delhi	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 900 MHz.)
3.	17.07.2002	Hutchison Max. Telecom Ltd. (Vodafone)	Mumbai	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 900 MHz.)
4.	13.01.2003	BPL Mobile Communications Ltd.	Mumbai	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 900 MHz.)
5.	17.07.2003	Bharti Airtel Ltd.	Delhi	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
6.	15.10.2003	Hutchison Max. Telecom Ltd. (Vodafone)	Delhi	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
7.	15.10.2003	Hutchison Max. Telecom Ltd. (Vodafone)	Mumbai	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
8.	31.12.2003	Fascel Ltd. (Vodafone)	Gujarat	7.8+7.8 MHz. (Add. 1.6+1.6 MHz. in 900 MHz.)
9.	31.12.2003	Bharti Airtel Ltd.	Karnataka	7.8+7.8 MHz. (Add. 1.6+1.6 MHz. in 900 MHz.)
10.	31.12.2003	Idea Cellular Ltd.	Maharashtra	7.8+7.8 MHz. (Add. 1.6+1.6 MHz. in 900 MHz.)
11.	09.01.2004	Spice Communications Ltd.	Punjab	7.8+7.8 MHz. (Add. 1.6+1.6 MHz. in 900 MHz.)
12.	09.01.2004	Bharti Airtel Ltd.	Punjab	7.8+7.8 MHz. (Add. 1.6+1.6 MHz. in 900 MHz.)

1	2	3	4	5
13.	09.01.2004	Aircel Cellular Ltd.	Tamil Nadu	7.8+7.8 MHz. (Add. 1.6+1.6 MHz. in 900 MHz.)
14.	09.02.2004	Bharti Airtel Ltd.	Andhra Pradesh	7.8+7.8 MHz. (Add. 1.6+1.6 MHz. in 900 MHz.)
15.	21.04.2004	Bharti Airtel Ltd.	Mumbai	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
16.	30.06.2004	Hutchison Max. Telecom Ltd. (Vodafone)	Kolkata	7.8+7.8 MHz. (Add. 1.6+1.6 MHz. in 900 MHz.)
16A.	06.09.2004	BPL Mobile Communications Ltd.	Mumbai	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
17.	20.09.2004	Idea Cellular Ltd.	Andhra Pradesh	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
18.	20.09.2004	Bharat Sanchar Nigam Ltd.	Kerala	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
19.	20.09.2004	Bharat Sanchar Nigam Ltd.	Tamil Nadu	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
20.	20.09.2004	Bharat Sanchar Nigam Ltd.	Andhra Pradesh	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
21.	27.10.2004	Bharat Sanchar Nigam Ltd.	Maharashtra	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
22.	28.10.2004	Escotel Mobile Comm. Ltd. (Idea)	Kerala	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
22A.	05.11.2004	Bharat Sanchar Nigam Ltd.	Karnataka	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
23.	03.12.2004	Bharti Airtel Ltd.	Karnataka	9.8+9.8 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
24.	03.12.2004	Aircel Cellular Ltd.	Tamil Nadu	9.8+9.8 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
25.	22.01.2005	Hutchison Max. Telecom Ltd. (Vodafone)	Karnataka	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
26.	01.04.2005	Idea Cellular Ltd.	Maharashtra	9.8+9.8 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
27.	06.05.2005	Mahanagar Telephone Nigam Ltd. (MTNL)	Mumbai	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
27A.	13.05.2005	Fascel Ltd. (Vodafone)	Gujarat	7.8+7.8 MHz. (Add. 1.6+1.6 MHz. in 900 MHz.)

1	2	3	4	5
28.	16.05.2005	Bharat Sanchar Nigam Ltd. (BSNL)	Gujarat	7.4+7.4 MHz. (Add. 1.2+1.2 MHz. in 900 MHz.)
29.	06.12.2005	Mahanagar Telephone Nigam Ltd.	Delhi	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
30.	06.12.2005	Idea Cellular Ltd.	Delhi	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
31.	20.01.2006	Bharti Airtel Ltd.	Mumbai	9.2+9.2 MHz. (Add.. 1.2+1.2 MHz. in 1800 MHz.)
32.	20.01.2006	Aircel Cellular Ltd.	Chennai	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
33.	20.01.2006	Bharti Airtel Ltd.	Chennai	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
34.	20.01.2006	Bharti Airtel Ltd.	Tamil Nadu	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
35.	28.01.2006	Escotel Mobile Comm. Ltd. (Idea)	UP (W)	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
36.	28.01.2006	Bharat Sanchar Nigam Ltd.	UP (W)	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
37.	28.01.2006	Aircel Digilink India Ltd. (Vodafone)	UP (E)	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
38.	28.01.2006	Bharat Sanchar Nigam Ltd.	UP (E)	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
39.	20.03.2006	Bharat Sanchar Nigam Ltd.	Chennai	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
40.	01.06.2006	Idea Cellular Ltd.	Andhra Pradesh	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
41.	08.06.2006	Bharat Sanchar Nigam Ltd.	Rajasthan	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
42.	09.06.2006	Bharti Airtel Ltd.	Bihar	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
43.	16.06.2006	Bharat Sanchar Nigam Ltd.	J&K	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 900 MHz.)
44.	12.07.2006	Hutchison Essar Ltd. (Vodafone)	Kolkata	9.8+9.8 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
45.	24.08.2006	Bharat Sanchar Nigam Ltd.	Bihar	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
46.	16.09.2006	Bharti Airtel Ltd.	Odisha	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)

1	2	3	4	5
47.	23.10.2006	Reliance Telecom (P) Ltd.	Bihar	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
48.	02.11.2006	BTA Cellcom Ltd. (Idea)	Madhya Pradesh	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
49.	15.11.2006	Bharti Airtel Ltd.	Chennai	8.6+8.6 MHz. (Add. 0.6+0.6 MHz. in 1800 MHz.)
50.	15.11.2006	Aircel Cellular Ltd.	Chennai	8.6+8.6 MHz. (Add. 0.6+0.6 MHz. in 1800 MHz.)
51.	15.11.2006	Bharti Airtel Ltd.	Tamil Nadu	8.6+8.6 MHz. (Add. 0.6+0.6 MHz. in 1800 MHz.)
52.	08.01.2007	Bharti Airtel Ltd.	Madhya Pradesh	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
53.	12.03.2007	Bharat Sanchar Nigam Ltd.	Andhra Pradesh	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
54.	12.03.2007	Bharat Sanchar Nigam Ltd.	Maharashtra	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
55.	12.03.2007	Bharat Sanchar Nigam Ltd.	Maharashtra	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
56.	12.03.2007	Bharat Sanchar Nigam Ltd.	Tamil Nadu	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
57.	12.03.2007	Bharat Sanchar Nigam Ltd.	UP(W)	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
58.	12.03.2007	Bharat Sanchar Nigam Ltd.	UP(E)	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
59.	12.03.2007	Bharat Sanchar Nigam Ltd.	West Bengal & Andaman Nicobar	8.0+8.0 MHz. (Add. 1.8+1.8 MHz. in 1800 MHz.)
60.	30.03.2007	Mahanagar Telephone Nigam Ltd.	Delhi	12.4+12.4 MHz. (Add. 4.4+4.4 MHz. in 1800 MHz.)
61.	30.03.2007	Mahanagar Telephone Nigam Ltd.	Mumbai	12.4+12.4 MHz. (Add. 4.4+4.4 MHz. in 1800 MHz.)
62.	05.04.2007	Bharat Sanchar Nigam Ltd.	Karnataka	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
63.	05.04.2007	Bharat Sanchar Nigam Ltd.	Bihar	10.0+10.0 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
64.	10.05.2007	Bharat Sanchar Nigam Ltd.	Madhya Pradesh	10.0+10.0 MHz. (Add. 3.8+3.8 MHz. in 1800 MHz.)
65.	10.05.2007	Bharat Sanchar Nigam Ltd.	N.E.	10.0+10.0 MHz. (Add. 3.8+3.8 MHz. in 1800 MHz.)

1	2	3	4	5
66.	10.05.2007	Bharat Sanchar Nigam Ltd.	Odisha	10.0+10.0 MHz. (Add. 3.8+3.8 MHz. in 1800 MHz.)
67.	10.05.2007	Bharat Sanchar Nigam Ltd.	Kolkata	10.0+10.0 MHz. (Add. 3.8+3.8 MHz. in 1800 MHz.)
68.	24.05.2007	Bharat Sanchar Nigam Ltd.	Assam	10.0+10.0 MHz. (Add. 3.8+3.8 MHz. in 1800 MHz.)
69.	12.07.2007	Bharat Sanchar Nigam Ltd.	Haryana	10.0+10.0 MHz. (Add. 3.8+3.8 MHz. in 1800 MHz.)
70.	12.07.2007	Bharat Sanchar Nigam Ltd.	Himachal Pradesh	10.0+10.0 MHz. (Add. 3.8+3.8 MHz. in 1800 MHz.)
71.	27.05.2008	Bharti Airtel Ltd.	Andhra Pradesh	9.2+9.2 MHz. (Add. 1.4+1.4 MHz. in 1800 MHz.)
72.	30.07.2008	Idea Cellular Ltd.	Chennai	9.2+9.2 MHz. (Add. 0.6+0.6 MHz. in 1800 MHz.)
73.	30.07.2008	BPL Mobile Cellular Ltd. (Vodafone)	Tamil Nadu	7.2+7.2 MHz. (Add. 1.0+1.0 MHz. in 1800 MHz.)
74.	30.07.2008	Bharti Airtel Ltd.	Tamil Nadu	9.2+9.2 MHz. (Add. 0.6+0.6 MHz. in 1800 MHz.)
75.	09.09.2008	Hutchison Max Telecom Ltd. (Vodafone)	Mumbai	10.2+10.2 MHz. (Add. 0.2+0.2 MHz. in 1800 MHz.)
76.	24.09.2008	Bharti Airtel Ltd.	Karnataka	10.0+10.0 MHz. (Add. 0.2+0.2 MHz. in 1800 MHz.)
77.	30.10.2008	Bharti Airtel Ltd.	Bihar	8.2+8.2 MHz. (Add. 0.2+0.2 MHz. in 1800 MHz.)
78.	30.10.2008	Bharti Airtel Ltd.	Bihar	9.2+9.2 MHz. (Add. 1.0+1.0 MHz. in 1800 MHz.)
79.	14.11.2008	Bharti Airtel Ltd.	Maharashtra	7.2+7.2 MHz. (Add. 1.0+1.0 MHz. in 1800 MHz.)
80.	23.12.2008	Bharti Airtel Ltd.	Rajasthan	8.2+8.2 MHz. (Add. 2.0+2.0 MHz. in 1800 MHz.)
81.	20.01.2009	Aircel Digilink India Ltd. (Vodafone)	UP(E)	8.2+8.2 MHz. (Add. 0.2+0.2 MHz. in 1800 MHz.)
82.	20.01.2009	Bharti Airtel Ltd.	UP(E)	7.2+7.2 MHz. (Add. 1.0+1.0 MHz. in 1800 MHz.)
83.	09.03.2009	Bharti Cellular Ltd.	Maharashtra	8.2+8.2 MHz. (Add. 1.0+1.0 MHz. in 1800 MHz.)
84.	09.03.2009	Bharti Cellular Ltd.	Maharashtra	10.0+10.0 MHz. (Add. 0.8+0.8 MHz. in 1800 MHz.)

CHAPTER X

OBSERVATIONS/RECOMMENDATIONS

The Era of National Telecom Policy—1994

10.1 The National Telecom Policy-1994 (NTP-1994) was formulated to spur de-regulation, liberalization and private sector participation, with the objectives of providing telephone on demand, provision of world-class services at reasonable prices and universal availability of basic telecom services to all villages. In furtherance of the objectives set out in NTP-1994, in November 1994, the Ministry of Communications and Information Technology (Department of Telecommunications) issued eight Cellular Mobile Telephone Service (CMTS) licences, two in each of the four Metro cities of Delhi, Mumbai, Kolkata and Chennai for a period of 10 years. The 1994 licensees were selected based on rankings (Beauty Parade) achieved by them on the technical and financial valuation based on parameters set out by the Department of Telecommunications and were required to pay a fixed licence fee for initial three years and subsequently based on number of subscribers. A cumulative maximum of upto 4.5 MHz in the 900 MHz bands was permitted. There was no separate upfront charge for allocation of spectrum to the Metro operators, who only paid annual spectrum usage charges. In December, 1995, 34 CMTS licences were granted based on auction for 18 Telecommunication Circles for a period of ten years. The allocation of spectrum and its usage charges were at par with those of 1994 licensees. Six Basic Telephone Service (BTS) licences were granted in the year 1997-98 by way of auction with the licence fee payable for a period of 15 years. The Committee find that the licensees of cellular mobile and basic telephone services did not honour their contractual obligations and defaulted in making payment of licence fee to the Government. Laxity shown by the Department in taking action against defaulting licensees against blatant violations of contractual obligations and its failure to strictly enforce the terms and conditions of licence agreements at the initial stages resulted in mounting of licence fee dues.

10.2 The Committee note that Cellular Operators Association of India (COAI) had, as early as in July 1997, approached the Department of Telecommunications for grant of reliefs citing non-viability of cellular projects. The industry pleaded that the revenue generated was not sufficient to meet the quantum of licence fee. The reliefs sought with regard to Circle licences were: (a) a two-years moratorium on licence fee payment without affecting overall Net Present Value (NPV), and (b) increasing the validity of licence period from 10 to 15 years by keeping the NPV of the licence fee to be paid unchanged. While considering the demands of the industry, it was felt by the Department of Telecommunications that the financial health of the cellular industry needed to be studied by an expert agency and further measures considered on the basis of its outcome. The matter was then discussed in a review meeting taken by the then Prime Minister on 1 November, 1997 where it was felt that it would not be advisable to refer such a study to a private consultant and it was decided that the study be referred to Telecom Regulatory Authority of India (TRAI) which had an advisory role under the TRAI Act. However, subsequently a decision was taken in a meeting taken by Shri A.V. Gokak, the then Secretary, Department of Telecommunications and Chairman, Telecom Commission on 17 December, 1997 to entrust the study to some expert Government agency on the ground that TRAI could take longer time to complete the study. On the question of overruling the decision taken at a

meeting headed by the Prime Minister, the then Secretary explained that he did not recollect having seen the minutes and it was not his intention to do anything of that kind. But records made available to the Committee make it amply clear that minutes of the meeting held by the Prime Minister was sent to the Department of Telecommunications where follow-up action was even initiated in the file at the level of Director (VAS-I) on 15 December, 1997 for referring the matter to TRAI. Somehow the proposal did not materialise. While justifying his decision not to refer the matter to the Regulator, the then Secretary stated that TRAI was at its nascent stage and experts were yet to be deployed. According to him, TRAI at that point of time was busy with re-balancing and restructuring of tariff for the entire telecom sector. The former Secretary, however, conceded that TRAI was not formally consulted whether the study could be undertaken by them. No record was found in the relevant file to suggest that the Department of Telecommunications had either reverted to the Prime Minister's Office or obtained approval of the Minister of Communications to entrust the study to an agency other than TRAI. The Committee, therefore, conclude that the decision of the then Secretary, Shri A.V. Gokak to entrust the study to an agency other than TRAI, tantamounts to overruling his superior authority. Such a decision should not have been taken without the approval of the Minister of Communications and the Prime Minister's Office. The Bureau of Industrial Cost and Pricing (BICP) submitted its report on cellular industry in November, 1998, that is after nine months of initial reference made by the Department of Telecommunications. It is interesting to note that TRAI was overlooked by the then Secretary on the ground that they would have taken more time for the study. Now considering the longer time taken by BICP to submit the study report, it can only be concluded that TRAI was ignored as a matter of design rather than so called tight time schedule weighing in favour of that decision. Further, questioning the ability of the Regulator to undertake the study without any formal consultation with them defies any logic and belies administrative jurisprudence. In the hindsight, the Committee hold the view that by ignoring TRAI, the Department of Telecommunications lost the benefit of input from its own Regulator at a critical juncture when the Department was engrossed with resolution of the demands of the licensees.

10.3 In pursuance of the decision arrived at in the meeting headed by Shri A.V. Gokak, the then Chairman, Telecom Commission, the Department of Telecommunications in January 1998 requested BICP to conduct a techno-economic study of the cellular industry as a whole. Subsequently, in March 1998, BICP intimated the Department of Telecommunications that they would require at least four months time to complete the study. In view of the time taken by BICP, in the meantime, Industrial Credit and Investment Corporation of India (ICICI) was also asked informally to study operational performance of the cellular operators in Telecommunication Circles. It is noteworthy to mention that the then Chairman, Telecom Commission took this decision despite the fact that the minutes of the review meeting taken by the Prime Minister clearly opposed referring such a study to a private consultant. Further, the element of conflict of interest was also ignored while choosing ICICI for the study because the institution was a lender to a number of companies who had represented to the Department seeking reliefs. The then Secretary pleaded that the intention was only to get the inputs from the lender but for the final decision, the professional input sought from BICP was to be considered. Justifying his decision, the then Secretary also mentioned that ICICI was not something which was introduced to the Ministry by him but its services were opted by the Department in some other context also. Notwithstanding the reasons adduced in this regard, the Committee are far from convinced to believe that impartial suggestions could be expected from ICICI who had direct interest in the matter being the banker to those companies demanding concessions from the Department. The Committee's apprehensions are further corroborated by the fact that the report which was submitted by ICICI to the Department of Telecommunications mostly contained recommendations which were in line with the concessions sought by the cellular operators in their representations made to the Department.

10.4 The Report of ICICI was informally submitted to the Department of Telecommunications in May 1998. ICICI recommended that the licence period of Circle cellular licensees be extended from 10 to 15 years with no licence fee for extended period and moratorium on licence fee payment for two years. The support to the industry recommended by ICICI was largely meeting the demands of the operators. The recommendations of ICICI were processed in the Department of Telecommunications on 8 June, 1998 in the context of demands of the cellular operators. It was emphasized in the Departmental noting that there was a strong possibility of litigation by both categories of bidders, namely, those who had bid for more Circles but have got few licences and those who had bid but got no licence as also public interest litigation, for changing the conditions of open/transparent tenders. The internal legal advisor of the Department of Telecommunications also endorsed the apprehension of the Department that litigation could ensue against the concessions to the industry. The matter was then placed before Shri A.V. Gokak, the then Chairman, Telecom Commission who submitted a comprehensive note to the then Minister of Communications on 16 June, 1998. The then Chairman, Telecom Commission recorded that the final decision in the matter of extending concessions to the industry could be taken only on receipt of the report from BICP. He also recorded his justifications for giving a special dispensation to the licensees if it was established that they were becoming genuinely non-viable. In his concluding remarks, the Chairman, Telecom Commission suggested that opinion of the Attorney General of India could be obtained with reference to: (a) whether the unsuccessful bidders and other affected parties could approach a Court of Law in case the Government decided to alter the terms and conditions of the licence agreement and (b) whether the Government could decide to give the reliefs that were asked for in case those were found to be genuine by evolving a procedure which was transparent, in consultation with TRAI. Subsequently, on 16 September, 1998, the Department of Telecommunications submitted a note to the Cabinet seeking approval for: (a) extending the licence period of Circle cellular operators from 10 to 15 years with additional licence fee and (b) the matter regarding the quantum of licence fees payable for the extended period of five years be referred to TRAI for their recommendation based on which the Government would take appropriate decision regarding the licence fee chargeable on the extended period. The Cabinet approved the aforesaid proposals.

It is pertinent to mention that as per provisions in licence agreement, the licence was extendable by five years or more at the discretion of the authority provided that the licensee was not in default or had not committed any breach of terms and conditions of the licence. At the point in time, when Cabinet note was mooted, 11 out of 14 Circle operators were in default in payment of licence fee. Thus, effecting the extension of licence period for Circle cellular operators was in relaxation of the provisions in the licence agreement. BICP was yet to submit their report to the Department of Telecommunications at the time when the Cabinet note was submitted seeking extension of licence period for Circle cellular operators. The position taken till then was that a final decision on the demands of the cellular operators could be taken only after receipt of professional input from BICP, which was a comprehensive study. Also records made available to the Committee do not indicate that opinion of the Attorney General of India was sought in the matter as was suggested by Shri A.V. Gokak, the then Secretary in his note dated 16 June, 1998 submitted to the Minister of Communications. Evidently, the decision of the Government to extend the licence period providing interim relief to the Circle cellular operators was based on the report of ICICI, the only report available at that point of time. Significantly, ICICI in its report mentioned that their findings, which were based on certain assumptions could prove wrong over a 15 year time frame. ICICI had conceded that they did not have the benefit of going through the audited accounts of the cellular operators. They had cautioned that it would not be possible to treat the findings as sufficient basis for taking important policy decisions and would be erroneous to draw any final conclusions on the basis of their report. It was also mentioned that the report of BICP might furnish more relevant facts and figures to provide further

insight into the problems of the industry. From the foregoing, the Committee are inclined to conclude that the Government of the day acted in haste by showing indulgence to the defaulting operators. It would have been prudent on the part of the Government to wait for the professional input from BICP report before taking a decision in the matter.

10.5 The report of BICP mentioned that during 1995-98, the actual demand for cellular phone exceeded the estimated demand in the Metros, while in the Circles, the actual demand was only 15 to 45% of the estimated demand in 1996-98. However, the Bureau viewed that this was only a temporary phenomenon and the demand for cellular services would pick up as the prices of handsets, activation fees, security deposits, etc. decline. The price elasticity of demand showed that a 10% fall in the price of a handset resulted in a 19% increase in demand, thus indicating that the demand for cellular services was eventually robust. The Bureau found that the Department of Telecommunications did not lay down clear-cut guidelines or standard schedules for project implementation at the time of issuing of licences, which resulted in time and cost-overruns in the implementation of cellular projects. On the issue of financial viability, the Bureau's analysis revealed that the companies had suffered losses during the initial years of operation. In order to improve the viability of majority of cellular operators, the Bureau recommended for increase in rental to Rs. 600/- per subscriber. It suggested that the inefficient operators be advised to review their future investment plans in order to achieve their full level of efficiency. In view of the foregoing, the Committee observe that the situation then was not so alarming that it warranted the operators to panic and approach the Department of Telecommunications repeatedly seeking reliefs. Significantly, global experiences suggest that initial losses suffered by the investors are not uncommon in Telecom Sector considering the gestation period for an industry of this nature.

10.6 The Committee note that even after four years of implementation, NTP-1994 did not yield the desired results. The private sector entry had been slower than what was envisaged under the policy framework and its performance was not satisfactory. While there had been a rapid roll out of mobile networks in the Metros and states, most of the projects were reportedly facing problems. Basic telecom services by private operators had just commenced in a limited way in two of the six Circles. The cellular and basic operators pleaded that the actual revenues realised by the projects had been far short of the projections and they were unable to arrange for finances for their projects and accordingly could not complete their projects. The Committee's examination revealed that licensees of both cellular and basic telephone services continued to violate provisions of licence agreements signed under NTP-1994. Most of the licensees blatantly violated the financial conditions by not paying dues to the Department of Telecommunications and also failing to adhere to other conditions of the agreement such as submission of financial bank guarantees, payment of Wireless Planning and Coordination (WPC) licence fee and royalty, opening of escrow accounts, etc. In the face of collective default and representation by the licensees, the Department of Telecommunications exhibited laxity in taking action in accordance with provisions of the licence agreements. This indulgence on the part of the Department of Telecommunications served as putting premium on defaults which ultimately resulted in further mounting of outstanding dues. The outstanding dues of licence fee against the basic and cellular service operators as on 20 December, 1998 was over Rs. 3100 crore. While considering that cellular industry was an altogether new experiment in this country, the Committee can hardly lose sight of the fact that the Department of Telecommunications abysmally failed to administer the new licensing regime which was largely at variance with the growth path visualised under the aegis of the first Telecom Policy.

10.7 The Committee appreciate that the Government of the day viewed the ensuing developments with concern which could adversely affect the further development of the telecom sector and recognised the need to take a fresh look at the policy framework for this sector. It

was wisely felt that a new telecom policy framework was required to facilitate India's vision of becoming an IT superpower and develop a world class telecom infrastructure in the country. The Government, therefore, constituted a Group on Telecommunications in November, 1998 with the mandate to formulate recommendations on the proposed New Telecom Policy as well as address issues relating to existing licensees of basic and cellular services and suggest appropriate remedial measures within the framework of New Telecom Policy. In the meeting of Group on Telecommunications held on 15 December, 1998, it was decided that the Department of Telecommunications would prepare a comprehensive note seeking the views of the Attorney General of India on the problems faced by the existing licensees. Accordingly, the then Minister of Communications submitted a note on 20 December, 1998 which was referred to the Attorney General of India by the Chairman, Group on Telecommunications on 24 December, 1998 alongwith his comments. The opinion of the Attorney General of India was sought regarding "whether a roll over of the guarantees till the end of the financial year, without any revenue concessionality, till a new policy framework is worked out would be legally or morally tenable". A perusal of the note initiated by the then Minister of Communications revealed that he was in complete disagreement with the representations made by the operators, who demanded a moratorium on payment of licence fee for two years and extension of period of licence from 10 to 15 years. It is evident from the note where he recorded "there was no legal, financial, commercial or moral justification for agreeing to the representation made by the operators." The Minister had recorded reasons supporting his viewpoint which are mentioned in paragraph 2.38 of the Report. He strongly favoured the option to recover all the outstanding dues from the operators. The Committee also find that the Minister in his communication dated 21 December, 1998 *inter-alia* drew the attention of the then Minister of Finance to the issue of non-recovery of huge amount of licence fees from the operators. In his communication dated 24 December, 1998, the Finance Minister while sharing his concern over non-recovery of huge amount of licence fee mentioned that such non-recovery would add to the budget deficit of Rs. 2800 crore in the relevant year's Budget. As regards the demand of the telecom operators for concessions in licence fee payments, he held the view "that businessmen should learn to take the responsibility of their decisions as they cannot be votaries of free market on the one hand and come back to the Government for a bail out in such a situation on the other." It is, however, surprising that despite serious observations by the two Ministers regarding granting of concessions to the telecom service providers, the proposal was allowed to be processed unhindered.

10.8 The Committee note that on 6 January 1999, the Attorney General of India tendered his advice to the Government. The Attorney General of India opined that the plea of the operators about wrong calculations or projections or the market having taken an adverse turn did not absolve them from their obligations under the existing licence agreement and certainly did not in law entitle them to any extension of licence period to 15 years. However, according to him, the Cabinet had already taken a decision in principle to extend the period of licence from 10 to 15 years. The Committee feel that it would have been wiser on the part of the Government to seek the advice of the Attorney General of India before taking a decision to extend the licence period. In fact, Shri A.V. Gokak, the then Secretary, Department of Telecommunications suggested this course of action to the Minister of Communications in his note dated 16 June, 1998. The Attorney General of India stressed that any arrangement which gave the defaulting operators time for payment must ensure that Government's right under the Bank Guarantees were protected. Therefore, he suggested that the grant of indulgence to the defaulting operators for time for payment of admitted outstanding should be on the conditions that: (a) Bank Guarantees which had lapsed should be renewed, (b) Bank Guarantees which were about to expire should be extended, (c) the amount of the Bank Guarantees should be enhanced to cover the current outstanding of the operators and (d) some payment (say 20%) of the admitted dues should be paid by the operators to show their *bona fides*. He opined that with this arrangement, no valid objection could be taken to the grant of time for payment as a *pro-tem*

arrangement till the finalisation of new policy. He, however, pointed out that an objectionable feature about such an arrangement was that the operators who had paid their dues would be treated at par with the defaulters. He cited that after the non-defaulting parties had come to know about on-going dialogue for settlement, their inclination to pay had diminished. He concluded by stating that Government action should not be perceived as putting premium on defaults or favouring the defaulters. The opinion of the Attorney General of India was discussed in the Group on Telecommunications and the matter was placed before the Prime Minister, who in his noting dated 9 January, 1999 ordered "I agree that we should follow the advice of the Attorney General of India. The Attorney General of India has himself outlined the safeguards. The issue of an appropriate guarantee structure should be discussed and settled between the Ministry of Finance and MOC for effecting roll over till 31 March, 1999 and enabling this problem to be suitably resolved."

The outstanding dues of licence fee as on 31 January, 1999 mounted to approximately Rs. 3708.10 crore (including interest). Based on the opinion of the Attorney General of India, the Government as a pro-tem measure, pending finalisation of a New Telecom Policy, agreed to extend the date of payment of licence fee upto 28 February 1999 provided by that date the licensees in order to establish their bona fides paid at least 20% or more of the arrears. Six licences were terminated as they failed to pay even 20% of arrears. Three licences were restored subsequently on payment of dues. In the opinion of the Committee, the sum and substance of Attorney General's opinion was suggestive of the fact that the indulgence to the defaulters with the proposed arrangement withstood legal scrutiny, but was found to be untenable on moral grounds because it meted out unfair treatment to those operators who were scrupulously following payment schedule.

New Telecom Policy—1999 & the Migration Package

10.9 Based on the report of Group on Telecommunications, NTP-1999 was considered and approved by the Cabinet on 26 March, 1999 to be made effective from 1 April, 1999. While approving NTP-1999, the Cabinet noted that it was in the public interest for the New Telecom Policy to be uniformly applicable all over the country. The Cabinet accordingly directed that the advice of the Attorney General of India be obtained on the issue as to whether it was legally possible to bring the existing licensees under the New Telecom Policy regime and if so, the appropriate modalities therefor. Accordingly, reference was made to the Attorney General of India seeking his opinion in the matter. On 16 June, 1999, the Attorney General of India tendered his advice to the Government. The Attorney General of India opined that in the light of the objectives of NTP-1999 and having regard to the ground reality and the prevailing situation engulfing the telecom industry, migration of licensees from NTP-1994 to NTP-1999 was warranted. He provided a framework under which a package of concessions were extended for integration of licences issued under the 1994 telecom policy. The package included extension of time for clearance of arrears, extension of licence period upto 20 years, across the board extension of effective date of licence, etc. In return, the licensees were to cede their duopoly rights and withdraw all legal proceedings against the Government. According to the Attorney General of India, integration of 1994 licensees subject to fulfilment of conditions stipulated in the suggested framework was legally tenable and withstood judicial scrutiny. Advocating the merits and necessity of the package, the Attorney General of India mentioned that termination of licences would have led to long drawn-out litigation having adverse impact on the telecom sector. According to him, changeover of the regime from duopoly to multipoly was conducive to revenue interest of the Government. Under the directive from the Prime Minister's Office, the Department of Telecommunications based on the recommendations of Attorney General of India submitted a note for Cabinet on 28 June, 1999 for migration of existing licensees to NTP-1999 regime. On consideration of the legal opinion given by the Attorney General of India and views of financial

institutions and consideration of the relevant facts including possible implications, the Union Cabinet on 6 July, 1999 approved the Migration Package. The offer of Migration was made to the existing licensees (36 cellular and 6 basic) on 22 July, 1999. All the CMTS and Basic Telephone Service Licensees migrated to the revenue sharing regime except M/s. Koshika Telecom for UP-East Cellular licence, whose licence was terminated due to non-payment of dues. An analysis of the evolution of the migration package, its implementation by the Government despite objections from various quarters and the revenue foregone by the exchequer on this count are dealt with in the succeeding paragraphs.

10.10 The Committee note that the migration package actually flowed from the Cabinet decision dated 26 March, 1999 which aimed at bringing a uniform policy by doing away with the earlier fixed licence fee regime. The state of existing telecom operators, given the rigidity inherent in the policy of NTP-1994, delay in roll out of services and very low airtime usage which led to consistent low revenues, defied any possibility of the existing operators performing any better. The idea of shifting away from duopoly to multipoly and flexible revenue regime in conjunction with reforms like Calling Party Pays strengthened the impression that the policy of NTP-1999 could usher in a revival of the entire telecom sector. The modality suggested by the Attorney General of India in the form of Migration Package provided the launching pad for the resolution of the problems of the existing licensees. The initial objections raised by the Ministry of Finance to some of the concessionalitys suggested by the Attorney General of India were duly considered by the Cabinet while approving the migration package. The Department of Telecommunications have also informed the Committee that the total revenue generated post-migration package was around Rs. 4144.32 crores more than the revenue that could have been generated, if the migration package would not have been introduced and had the licensees been allowed to operate under the duopoly regime till its expiry in 2005. The Committee, however, take note of the fact that at the time of approval and implementation of the Migration Package, a caretaker Government was in place following dissolution of Parliament. Prior to implementation of the Migration Package by the caretaker Government, the then President of India drew the attention of the Prime Minister to the fact that there was no urgency in taking a decision in haste at that juncture. He suggested that the Cabinet decision on migration package having enormous financial implication could be regarded as decision in principle to be operationalised after the elections by the next Government. The Prime Minister wrote back to the President of India indicating that the policy decision in this regard was taken well before dissolution of the Parliament and justified the need for its urgent implementation brooking no delay. Following implementation of migration package, the Election Commission of India took cognizance of representations made to it and obtained a factual report from the Government. In August, 1999, the Election Commission of India released a press note wherein they observed with concern that the response from the Government did not indicate the full picture of the case and vital questions had been left unaddressed. Taking note of the fact that Delhi High Court was seized of the matter, the Election Commission did not wish to make any further comments. In the meanwhile, a Public Interest Litigation challenging the Migration Policy was filed by Delhi Science Forum in Delhi High Court in 28 July, 1999. Delhi High Court passed an interim order on 10 August, 1999 to the effect of allowing the Government to permit the Migration Package "subject to the approval of the Council of Ministers after constitution of 13th Lok Sabha and subject to approval, if any, by the Lok Sabha". In the light of the pronouncement made by Delhi High Court, which stayed the implementation of the Migration Package, it is evident that the Government of the day acted in haste and it would have been wiser on the part of the Government to hold back the Cabinet decision till the constitution of new Government.

10.11 The Committee wish to point out that the Government suffered a revenue loss to the tune of Rs. 1443.58 crore on account of extension of effective date of licence by six months. The Attorney General of India while suggesting this extension pointed out that there were delays

on the part of the Department in giving clearances from agencies like Standing Advisory Committee on Frequency Allocation, Foreign Investment Promotion Board, etc. The BICP in its report also mentioned that there were no clear-cut guidelines or standard schedule for project implementation at the time of issue of licences. The Bureau, therefore, emphasized that the Department of Telecommunications should issue necessary guidelines and lay down the procedures for obtaining clearances from various Government agencies within a fixed time frame. The Committee are, therefore, inclined to conclude that due to inept handling of 1994 licensing regime, the exchequer had to forego revenue to the extent of Rs. 1443.58 crore in the context of Migration Package.

10.12 The Committee note that the Department of Telecommunications, at no point of time, calculated the loss suffered by the exchequer due to the Migration Package. The Committee have, however, been informed that impact on licence fee and spectrum charges collection due to the Migration Package was to the tune of Rs. 43,523.92 crores, which included the sum of revenue i.e. Rs. 1,443.58 crores foregone on account of extension of effective date of licence by six months. The Department of Telecommunications have stated that the Migration Package did not provide for recovery of the amount of Rs. 42,080.34 crores (after excluding Rs. 1443.58 crores). According to the Migration Package, the telecom licensees were to pay '...one time Entry Fee and Licence Fee as a percentage share of Gross Revenue under the licence. The entry fee chargeable will be the licence fee dues payable as per Terms and Conditions of the said licence upto 31 July, 1999, calculated upto this day duly adjusted consequent upon notional extension of the effective date...'. The Committee are, therefore, inclined to conclude that the Government also had to forego revenue to the tune of Rs. 42,080.34 crores in the course of offering Migration Package *vide* NTP-1999.

Post Migration Period

10.13 The Committee note that while processing the applications received for grant of Basic Service Licences, a decision was taken by Shri Shyamal Ghosh, the then Secretary, Department of Telecommunications to grant time to the applicants to rectify the deficiencies in their applications. In evidence, the then Secretary explained that in terms of natural justice, the applicants should have been informed about the deficiencies in their applications. The date of rectification was taken as the date of application and in the process no harm was caused to anybody. According to him, the Department of Telecommunications was trying to get more people in the Basic Service Licensing Sector. The Committee do appreciate the steps taken to attract more service providers in the Basic Service Sector. It is, however, relevant to point out that in the notified Guidelines for grant of Basic Service Licences, there was no provision for extending time for rectifying the deficiencies in the applications. The question that arises is as to why the Guidelines were not suitably modified by issuing appropriate notification pursuant to the decision taken to grant time for rectifying the deficiencies in the applications. Also, it was not specified in the order in regard to the maximum limit of time for grant of extension leaving scope for subjective treatment. The Committee conclude that while the intent of the decision taken in the prevailing situation appeared to be reasonable, the manner of its implementation could have been more transparent by suitably modifying the extant Guidelines to rule out any subjective assessment.

10.14 Also, the Guidelines did not have an enabling provision for extension of time for compliance with terms of Letter of Intent (LOI). However, the time was extended time and again for several months for Tata Tele Services Limited for grant of Basic Service Licences in the areas of Maharashtra, Punjab and Haryana. This decision was taken with the approval of the then Minister of Communications. The Committee feel that in the absence of modification of the Guidelines pursuant to the decision taken to grant time for compliance with the LOI, there was scope for arbitrary exercise of power and favouritism.

10.15 TRAI in their recommendation dated 31 August, 2000 noted that the existing licences for Basic Services stipulated wireless as the preferred technology for subscriber loop (Local Loop). The Authority further noted that employment of this technology, *i.e.* wireless, would appear to be inescapable if quick roll-out and connection on demand in congested areas was to be given as per TRAI's quality of service guidelines. The Telecom Commission, after considering the recommendations of TRAI on 21 September, 2000, specifically sought the opinion of TRAI on 9 October, 2000, *inter alia*, on the scope of area of hand-held subscriber terminals under wireless access system operations, the basis for assigning WLL frequency, the amount of entry fee and spectrum charges as a percentage of revenue to be charged from the Basic Service Operators for extending the above facility in respect of existing as well as future Basic Service Licensees so as to ensure a level playing field with the Cellular Operators. The recommendations of TRAI on the issues relating to limited mobility through WLL systems were received in the Department of Telecommunications on 8 January, 2001. TRAI recommended that hand-held sets might be permitted in WLL limited to local area *i.e.* Short Distance Charging Areas (SDCAs) to ensure clear demarcation between the services provided by Cellular Operators and Basic Service Operators. The Committee note that on 22 January, 2001, a petition was filed by the Cellular Operators' Association of India (COAI) in TDSAT seeking a direction that the Telecom Commission should not consider the recommendations of TRAI on the issue of Limited Mobility but no such direction was issued by the Appellate Tribunal. The recommendations of TRAI were considered by the Telecom Commission on 24 January, 2001 and the same were accepted. Accordingly, on 25 January, 2001, the Department of Telecommunications issued the Guidelines for issue of licence for Basic Service *inter-alia* permitting the Basic Service Operators to provide mobility to their subscribers with wireless access systems, but limited within the local area *i.e.* SDCA in which the subscriber was registered. On 29 January, 2001, the Tribunal ordered, "In the meantime, any licence granted will abide by the result of this petition. If any licence is granted, it will contain a clause that the licence will be revoked, if the decision goes in favour of the petitioners in this case. Mr. H.N. Salve, Solicitor General of India, appearing on behalf of the Union of India has suggested this interim order". Aggrieved by the decision taken by the Department of Telecommunications on 25 January, 2001 permitting WLL facility to Basic Telephone Service Operators, COAI and others challenged the decision in TDSAT on various grounds, particularly that the decision was against the avowed policy, *viz.* the NTP-1999. In the meantime, on 23 April, 2001 the Prime Minister had directed that the Group on Telecom and IT Convergence (GoT-IT), which was reconstituted on 10 November, 2000, would consider and submit its recommendations on the following:-

- "(a) Whether the New Telecom Policy-1999 permits "Limited Mobility" service to be offered by Fixed Service Providers.
- (b) If it is permitted under NTP-1999, how it can be introduced to be consistent with the principle of level playing field among different categories of operators with the objective of assured services at cheapest possible rates.
- (c) If it is not permitted under NTP-1999, how the policy can be suitably modified to facilitate Limited Mobility to ensure faster achievement of the targets for tele-density as well as rural and remote area telephony at cheaper and affordable rates."

10.16 The GoT-IT submitted its report to the Prime Minister on 26 April, 2001 which was accepted by the Prime Minister on 27 April, 2001. The Group arrived at certain findings which *inter-alia* included that (i) NTP-1999 enabled the use of Wireless in Local Loop access system by the Fixed Service Providers. The Group noted that Wireless in Local Loop would greatly facilitate the roll out in rural areas at affordable prices. Even in urban areas where it was technically non-feasible to provide wireline services, Wireless in Local Loop was the only option for quick roll out. In pursuance of GoT&IT's recommendation, on 4 May, 2001, the Department of Telecommunications

amended the Guidelines dated 25 January, 2001 for issue of Basic Telephone Service Licences to provide for detailed roll-out obligations with reference to SDCAs. In its judgment dated 15 March, 2002, TDSAT dismissed the petition filed by COAI mainly on the ground that granting Limited Mobility in WLL was a matter of policy of the Central Government. The scope of the jurisdiction of the Tribunal to interfere with the policy decision taken by the Government was considered to be very limited. On appeal filed by the COAI & others against TDSAT judgment, the Supreme Court of India held that the Tribunal erred in its judgment that it could not review the Government decision to allow WLL service. It held that the Tribunal could do so in terms of Section 14 of the Act and remanded the matter to the Tribunal for reconsideration with special emphasis on the question of level playing field as well as to look into the legality of the Government's decision. After re-examining the matter, the TDSAT, through a majority judgment on 8 August, 2003, upheld the validity of the action taken by the Department of Telecommunications but desired the Government to initiate action to levy additional entry fee, since the service that was being allowed was in the nature of a value addition to the original licence. It directed that the determination of additional entry fee should be done by the telecom regulator. Accordingly, the Department of Telecommunications *vide* its letter dated 18 August, 2003 sought TRAI's recommendations based on the above judgment of TDSAT. On 27 October, 2003 TRAI gave its recommendations on WLL (M) issues suggesting additional entry fee to be levied for certain Circles on the Basic Service Operators providing the WLL(M) Service.

10.17 Taking cognizance of the developments associated with evolution of wireless technology for providing Limited Mobility Service, the Committee have no hesitation to conclude that Wireless in Local Loop was then the preferred technology for Basic Service Providers to facilitate quick roll-out of services to increase tele-density in rural and remote areas and enhance quality of services as well. The Committee also find that NTP-1999 permitted Limited Mobility Service to be provided by the Fixed Service Providers and the grievance of Cellular Operators who went into litigation were appropriately addressed through TDSAT judgment and follow-up recommendations from TRAI, which were subsequently accepted by the Union Cabinet and suitably implemented by the Department of Telecommunications.

10.18 The Committee note that as per clause 2.2 (c) (i) of Basic Service Operators' Licence Agreement "The Licensee is allowed to provide mobility to its subscribers with Wireless Access Systems but limited to the local areas *i.e.* SDCA in which the subscriber is registered. While deploying such systems, the Licensee has to follow the numbering plan of the respective SDCA within which the service is provided and it should not be possible to authenticate and work with the subscriber terminal equipment in SDCAs other than the one in which it is registered. The system shall also be so engineered to ensure that hand over of subscriber does not take place from one SDCA to another SDCA while communicating". The provision in the licence agreement was clearly meant to ensure clear demarcation between the services provided by the Cellular Operators and Basic Service Operators. However, the Committee find that M/s. Reliance Infocomm Limited, one of the Basic Service Operators was offering service whereby a subscriber registered in a particular SDCA could move to the other SDCAs and get the handset activated over the air by pressing *444N (where N is number of days for which the service is required in that SDCA) without any loss of time (around one minute). Also, it had come to light that in some cases at the time of registration in SDCA, a subscriber was simultaneously given the telephone numbers for adjacent SDCAs. These facilities had been given the nomenclature of multiple registration and temporary subscriber service. The mobility being provided using these features had in effect changed the character of the Basic Service Licence and thus was in violation of the spirit of the licence. While taking note of the representation made by the Cellular Operators pointing out the above irregularity, TRAI in its letter dated 14 August, 2003, had written to the Department of Telecommunications to clarify/amend the licence conditions so that the condition of Limited Mobility within SDCA was implemented in letter and spirit. However, for Unified Licensing, TRAI

considered that since M/s. Reliance Infocomm Limited by virtue of offering mobility even beyond SDCAs had acted like a cellular operator right from the day of signing the licence agreement, M/s. Reliance Infocomm Limited was liable to pay the penal interest *w.e.f.* the date of signing its licence agreement till the date of migrating to the Unified Access Service Licence Regime in addition to the entry fee paid by 4th Cellular Operators in respective circles. TRAI had accordingly recommended that M/s. Reliance Infocomm Limited had to pay Rs. 1096 crore as entry fee for migration to UASL Regime and in addition pay penal interest to the tune of Rs. 485 crore for offering cellular types services. The Committee note that the Government constituted a Group of Ministers in September, 2003 whose terms of reference also included reviewing adequacy of steps for enforcing Limited Mobility within the SDCA for WLL(M) Services of Basic Service Operators and recommend the future course of action. The Group of Ministers also took note of the violations stipulated in the licence agreement by M/s. Reliance Infocomm Limited and accepted the recommendations of TRAI that suggested corrective measures to enforce Limited Mobility. The Group of Ministers also took note of the fact that the Department of Telecommunications was in the process of issuing notices to M/s. Reliance Infocomm Limited to discontinue certain features employed by the company that blurred the distinction of WLL(M) and Cellular Mobile Services. The Group of Ministers also accepted the recommendations of TRAI in regard to entry fee payable by Basic Service Operators for providing WLL(M) Service on which Government sought its recommendations based on judgment of TDSAT dated 8 August, 2003. All the recommendations of Group of Ministers on the issue of enforcement of Limited Mobility by the Basic Service Operators were accepted by the Cabinet on 31 October, 2003. The question arises, as to how, the irregularities committed by M/s. Reliance Infocomm Limited went unnoticed by the Department of Telecommunications. Though the operator was penalised and allowed to migrate to Unified Access Licensing Regime after paying the penalty, the Committee cannot but hold the Department of Telecommunications squarely responsible for their failure to enforce the terms and conditions of licence agreement entered into with M/s. Reliance Infocomm Limited for providing WLL(M) services.

10.19 The Committee note that the licenses issued in 1997-98 stipulated that the Basic Service Providers were required to commission at least 10% of total Direct Exchange Lines (DELs) provided in each quarter as Village Public Telephones (VPT) as part of roll-out obligations for rural telephony. However, TRAI in its recommendations dated 31 August, 2000 defined roll-out obligations in terms of establishment of at least one Point of Presence (PoP) in SDCAs of the Service Area. TRAI was of the opinion that such obligations would be better fulfilled by the Service Providers voluntarily rather than through a conditionality of the licence, which thus far had not been found to be enforceable. After considering the recommendations of TRAI, the Telecom Commission took a decision to dispense with the roll-out obligation for rural telephony and added a clause in the licence terms and conditions that Service Providers should be required to maintain a transparent, open to inspection waiting list. The Guidelines for Basic Telephone Service issued on 25 January, 2001 completely dispensed the roll-out obligation for rural telephone on the part of the Service Providers. Shri Shyamal Ghosh, the then Secretary, Department of Telecommunications in evidence justified the concept of Point of Presence (PoP) by saying that this was a much better way of fulfilling roll-out obligations for rural telephony. The Committee, however, are of the opinion that the recommendations of TRAI to introduce the concept of Point of Presence PoP was certainly a dilution in the roll-out obligation which provided leverage to the Basic Service Providers. The Committee completely disagree with the observations of TRAI that roll-out obligations would be better fulfilled by the Service Providers voluntarily rather than through a conditionality of the licence which was not found to be enforceable.

10.20 The Committee note that a decision was taken on 31 January, 2002 for allocation of additional spectrum beyond 6.2 MHz and upto 10 MHz to the existing cellular operators in Mumbai and Delhi Metro Service Areas wherein only 1% additional revenue share was charged.

The Committee's examination revealed that the above decision was taken based on a note put up by the then DDG (VAS) on 31 January, 2002 that a consensus had emerged after discussions that additional spectrum to the extent of 1.8 MHz (paired) in 1800 MHz band might be released on case to case coordination basis to the operators after customer base of 5 lakhs was reached. On the said note, Shri Shyamal Ghosh, the then Chairman, Telecom Commission indicated that for allocation of spectrum beyond 6.2 MHz and upto 10 MHz additional 1% revenue sharing would imply total spectrum charge of 4% of Adjusted Gross Revenue (AGR) for such cellular operators. The note seeking approval of additional spectrum was then marked to the then Minister of Communications who approved the proposal the same day. The file clearly shows that the proposal was not submitted to the Wireless Advisor (retiring that day), Member (P), Member (F) and the MoS, who were all said to be out of station. However, the noting mentions that "the above scheme was also discussed by Member (F) with officers from WPC and he was agreeable to the scheme (he has gone out of station in the afternoon)". The note submitted by the then DDG (VAS) also indicated that Sr. DDG (TEC) had carried out testing of congestion, etc. in Delhi networks and was about to submit the report in this regard. On the question of taking the decision in a day when most of the officers who mattered in the decision making were not present, the then Secretary justified the decision saying that the issue of allocating additional spectrum was to be resolved urgently because the operators in Delhi and Mumbai circles were really facing network congestion affecting the quality of service. The then Secretary also pleaded that the matter was pending in the Department for near about an year, this was under discussion, certain decisions had been arrived at and the officers concerned were present at that point of time. According to him, the decision taken on 31 January, 2002 was only the ratification of the decision which had already been arrived at.

10.21 As regards charges for the additional spectrum, the Committee note that consequent to change over to revenue sharing regime, 2% of revenue (AGR) was being charged for GSM Spectrum upto 4.4 MHz (paired) and additional 1% of revenue was being charged for additional spectrum of 1.8 MHz (paired). On the same analogy, further additional spectrum charge of revenue in terms of percentage of AGR would have implied as follows:-

- (i) For allocations of spectrum beyond 6.2 MHz upto 8 MHz revenue share at 4% of AGR.
- (ii) For allocation of spectrum beyond 8 MHz upto 9.8 MHz revenue share at 5% of AGR.
- (iii) For allocation of spectrum beyond 9.8 MHz upto 10 MHz or beyond revenue share at 6% of AGR.

10.22 In evidence, Shri Shyamal Ghosh, the then Chairman, Telecom Commission justified the formula adopted for allocation of additional spectrum and stated: "...the Telecom Commission had considered the revenue sharing regime earlier and prescribed a certain formula, and that formula included that 4.4 Mhz. + 4.4Mhz. will be 2 per cent; then down the line, the Government decided and TRAI recommended that there should be level-playing field between CDMA and GSM bands. Sir, if 5+5 MHz is 2 per cent, which was approved earlier, then the extension of that logic was 10+10 MHz. will be 4 per cent". It is relevant to point out that the note dated 31 January, 2002 did not mention anything about the level playing field issue between CDMA and GSM operators. Significantly, based on the recommendations of TRAI on 8 January, 2001, the Department of Telecommunications reduced licence fee from 17% to 12% for the Metro and 'A' category, to 10% for 'B' category and 8% for 'C' category circles to ensure level playing field between Cellular Mobile Operators and Basic Service Operators. Thus, the justification adduced by the then Secretary appears to be an after-thought. Another issue which drew the attention of the Committee relates to reduction in the requirement of subscriber base from 9 lakhs (as recommended by Technical Committee) to 4-5 lakhs for allocation of additional spectrum. This was proposed in the note dated 31 January, 2002 by DDG (VAS) indicating that a consensus

had emerged after discussions. Moreover, the step taken was a reversal of the stand taken by the then Secretary, Department of Telecommunications in the note he had recorded only about 20 days earlier in which he stated "it would be appropriate from the report that there is no immediate need for additional spectrum if the allotted spectrum is optimally utilised with better network configuration by decreasing the cell size and decreasing the distance between these cell sites to about half a kilometre". The Committee also find the proposal intriguing in view of the fact that the concerned officers who mattered in the decision making were not present on the day when the note was initiated and decision taken in the matter. The Committee further take note of the fact that the Department of Telecommunications did not refer the matter of allocation of additional spectrum for an expert opinion to its Regulator. No plausible explanation in this regard could be given by the then Chairman, Telecom Commission in evidence before the Committee. In the opinion of the Committee, the whole sequence of events leading to the decision taken for allocation of additional spectrum to the operators in Metro circles of Mumbai and Delhi is clearly indicative of inept handling of such a vexed issue by the Department of Telecommunications. The unusual haste in which the decision was taken in a day also appeared to be questionable. Pursuant to this decision, a general order was issued on 1 February, 2002 and allotment of spectrum was given to the existing cellular operators in Metro circles in Delhi [Bharti Airtel Limited, Hutchison Max Telecom Limited (Vodafone), Mahanagar Telephone Nigam Limited and Idea Cellular Limited] and Mumbai [BPL Mobile Communications Limited, Hutchison Max Telecom Limited (Vodafone), Mahanagar Telecom Nigam Limited and Bharti Airtel Limited]. The Committee conclude that on the analogy existing before allocation of additional spectrum would have implied additional 2% of AGR beyond 6.2 MHz upto 9.8 MHz instead of 1% of AGR thereby total 5% of AGR upto 9.8 MHz. However, the allocation of additional spectrum beyond 6.2 MHz and upto 10 MHz was approved wherein only 1% of additional revenue was charged. This is evident that additional spectrum charge was deliberately under-valued to favour some telecom operators thereby causing revenue loss to the exchequer. The Committee have been given to understand that the Central Bureau of Investigation is looking into the matter and a regular case has reportedly been registered in this regard. The Committee hope that the law will take its own course and the matter will be taken to its logical end.

Unified Access Service Licence Regime

10.23 In the context of technological developments in telecommunications and blurring of differences between wireless and wireline systems, TRAI felt that there was no justification in continuing a service-centric licensing regime. In this backdrop, as mandated by Section 11 (1) of the TRAI Act, TRAI gave its *suo-motu* recommendations on Unified Licensing Regime on 27 October, 2003. The pivot of the recommendations by TRAI was that the then system of licensing in the telecom sector should be replaced by Unified Licensing/Automatic Authorization Regime. The Unified Licensing/Automatic Regime was recommended to be achieved in a two-stage process with the Unified Access Regime for basic and cellular services in the first phase to be implemented immediately. The second stage was to be followed for achieving a fully Unified Licensing/Authorization Regime within a period of six months. The recommendations of TRAI were accepted by the Group of Ministers on telecom matters which was constituted in 2003 and the same were placed before the Cabinet. On 31 October, 2003, the Cabinet accepted the recommendations of the Group of Ministers and approved the proposal for charting the course for Universal Licensing Regime in the following manner:-

- (a) *The scope of NTP-1999 may be enhanced to provide for licensing of Unified Access Services for basic and cellular licence services and Unified Licensing comprising all telecom services. Department of Telecommunications may be authorised to issue necessary addendum to NTP-1999 to this effect.*
- (b) *The recommendations of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted. The Department of Telecommunications may be authorised to finalise the details of implementation*

with the approval of the Minister of Communications and IT in this regard including the calculation of the entry fee depending on the date of payment based on the principle given by TRAI in its recommendations.

- (c) *The recommendations of TRAI in regard to the course of action to be adopted subsequently in regard to the implementation of the fully Unified Licence/Authorisation Regime may be approved. The Department of Telecommunications may be authorised to finalise the details of implementation with the approval of the Minister of Communications and IT on receipt of recommendations of TRAI in this behalf.*

10.24 Pursuant to the above Cabinet decision, NTP-1999 was amended on 11 November, 2003 to include the following categories of licences:-

- (a) Unified Licence for telecommunication services permitting licensee to provide all telecommunication/telegraph services covering various geographical areas using any technology;
- (b) Licence for Unified Access (Basic and Cellular) Services permitting licensee to provide Basic and/or Cellular Services using any technology in a defined service area.

10.25 On 11 November, 2003, Guidelines for Unified Access (Basic and Cellular) Services Licence were issued wherein the Government had decided to move towards a Unified Access Licensing Regime. The Guidelines *inter-alia* stipulated that "with the issue of these Guidelines, all applications for new access services licence shall be in the category of Unified Access Services Licence". However, the Committee note that in these Guidelines no specific procedure for grant of new UASL was prescribed.

10.26 The Committee have been given to understand that the Cabinet while approving the course for Unified Licensing Regime left the field open for the entry of new players for Universal Access Service Licence. Subsequent to issue of Guidelines, on 12 November, 2003, the Department of Telecommunications received some applications for grant of UASL in the form prescribed for erstwhile Basic Service Licences. So, the Department of Telecommunications addressed themselves in processing the application. At this stage, Shri Vinod Vaish, the then Secretary, Department of Telecommunications had a telephonic conversation with Shri Pradip Baijal, the then Chairman, TRAI seeking clarification regarding the entry fee to be charged for UAS Licences. In his D.O. letter dated 14 November, 2003, the then Chairman, TRAI clarified that the entry fee of the new Unified Licence would be the entry fee of the 4th Cellular Operator and in service areas where there was no 4th Operator, the entry fee of the existing BSO fixed by the Government (based on TRAI's recommendations). In such States, where no 4th Cellular Operator came in, the entry fee for BSOs fixed by the Government as per recommendations of TRAI, will be the entry fee for new or existing Unified Licensee. Question arose as to why the former Secretary chose to seek clarification over telephone on such an important issue and what was the need for that. In this context, Shri Vinod Vaish, the then Secretary submitted the background of such a decision taken by him. He mentioned that the industry was watching very carefully as to how the Department of Telecommunications took the follow up action on the Cabinet decision dated 31 October, 2003. According to him, the legal advice was that the Government should give a signal in line with the TRAI recommendations and the approval of the Cabinet that in future the Government would give only Unified Access Licences for access purpose and the Department of Telecommunications would not now give fixed service licences and Cellular Mobile Licences because if these service-specific licences were given, then they might again result in one category of licences transgressing into the area of the other. It was, therefore, introduced into the Guidelines issued in November 2003 that all fresh applications for access licences will be in the Unified Access Service Category. In para 7.39 of the TRAI recommendations dated

27 October, 2003, it was recommended that if Government ensures availability of additional spectrum, then, in the existing licensing regime, they might introduce additional players through a multi-stage bidding process as was followed for 4th Cellular Operator. Drawing reference to this recommendation of TRAI, the former Secretary submitted that there was a real difficulty because paragraph 7.39 of TRAI recommendation was meant for new Cellular Operators in the existing regime or pre-UASL regime. The Department of Telecommunications was not sure what was then to be done for new UASL operators in terms of the TRAI recommendation and the Cabinet decision. The former Secretary stated that in this backdrop it was felt that there was need for some clarification by the Chairman, TRAI and the position was cleared by the Chairman in his communication dated 14 November, 2003 which facilitated the Department to go ahead in implementing the policy enunciated by the Cabinet. Regarding the urgency, the former Secretary informed the Committee that a litigation was going on in the Supreme Court after the recommendations of TRAI dated 27 October, 2003 came into existence. Also an appeal was filed in the Supreme Court against the Cabinet decision dated 31 October, 2003. The Department of Telecommunications learnt from its Counsel that the way the case was proceeding, a stay was imminent. The Department of Telecommunications had the apprehension that had this happened, the entire exercise of the Government to solve the problem of regulatory uncertainty where the fixed line operator was transgressing into the area of the mobile operator would have been rendered futile. Hence, the decision taken by the Department of Telecommunications at that point of time was only for the transition period of six months prior to coming into force of the Unified Licensing Regime. The idea evolved then was to implement the reform that was contemplated in the Cabinet decision without the Court coming into the way and issuing a stay order. The Committee note that with the implementation of UASL regime, the concern of the industry was adequately addressed which put an end to the then on-going litigation. Regarding the background of the D.O. letter dated 14 November, 2003 written by the former Chairman, TRAI, the Committee have been informed that the letter had the *ex-post facto* approval of the Authority.

10.27 The Committee take note of the circumstances in which the Department of Telecommunications initiated action to induct new players in the UASL regime. It appears that the Department of Telecommunications' anxiety to issue licences to the new operators was dictated by the outcome of the litigation going on at that time in the Supreme Court which could have stalled the reform process pronounced in the Cabinet decision dated 31 October, 2003. It is apparent that Cabinet must have been fully aware of the development in the telecom sector at that point of time when it approved charting the course of Unified Licensing Regime. However, the Cabinet decision dated 31 October, 2003 while approving the policy framework for UASL regime, nowhere explicitly underscored the background which prompted the Department of Telecommunications to go ahead with issue of licences with such an unusual haste. One way of looking at the Cabinet decision could be that the new policy framework intended towards ending the litigation and facilitate growth in telecom sector. In the hindsight, the Committee take objection to the manner in which the Department of Telecommunications dealt with the issue of obtaining opinion of TRAI on a critical aspect of entry fee for a newly introduced Universal Access Service Licence. The manner in which the then Chairman, TRAI rendered the opinion in the matter, which subsequently received an unusual *ex-post facto* approval of the Authority, is equally a matter of concern. While there is no denying of the fact that when certain policy framework is put in place by the Government of the day, it obviously precedes a definite context and background, but its implementation ought to be just and transparent in accordance with the existing rules and procedures. In the opinion of the Committee, the action of the Government in the instant case is an example which certainly set an unhealthy precedent.

10.28 The Committee note that on 17 November, 2003, the Department of Telecommunications decided to accept the applications made on 12 November, 2003 and adopted the procedure for deciding with the application similar to the one adopted for Basic Service Licences. This

procedure was evolved in the background that the Guidelines dated 11 November, 2003 did not spell out specific procedure for grant of new UASL. Since the spectrum allocation procedure was also not defined, the Department of Telecommunications on 17 November, 2003 requested TRAI to make available its recommendations on spectrum related issues on an urgent basis to facilitate grant of UAS Licences. In response, TRAI through letter dated 19 November, 2003 *inter-alia* stated that in the interim period before the TRAI recommendations on efficient utilization of spectrum were available, if the licensor had to issue any Unified Access Licence to new applicants, spectrum to the licensees might be given as per the existing terms and conditions relating to spectrum in the respective licence agreement. On 24 November, 2003, a decision was taken by the then Minister of Communications and Information Technology to grant UAS Licences on First-Come-First-Served (FCFS) basis. FCFS procedure was adopted on the premise that "the announced Guidelines have made it open for new licences to be issued on continuous basis at any time. However, the spectrum is to be allotted subject to availability. This in effect would imply that an applicant who comes first will be granted spectrum first, so it will result in grant of licence on First-Come-First-Served basis". On 24 November, 2003, on the basis of the letter of Chairman, TRAI dated 14 November, 2003, a decision was taken by the then Minister of Communications and Information Technology that the entry fee for grant of new UAS Licences would be equal to the entry fee for the 4th Cellular Operators and where there were no 4th Cellular Operator, the entry fee for existing BSOs fixed by the Government. In such States where no 4th Cellular Operator came in, the entry fee for BSOs fixed by the Government as per recommendations of TRAI would be the entry fee for new or existing Unified Licensee. The Department of Telecommunications maintained that since inception of mobile services, 2G Spectrum was being allotted on FCFS basis, though Guidelines in this regard were issued for first time on 25 January, 2001 and the same procedure of allocation of 2G Spectrum continued in UASL Regime also. But the point in contention is that prior to UASL Regime, spectrum was allocated on FCFS basis and not the licences. However, as per the decision taken on 24 November, 2003, licences continued to be issued on the basis of FCFS. The former Secretary, Department of Telecommunications contended that FCFS was the normal, most natural, most just principle that could be applied when something was to be given to a set of people who were in a queue. He further clarified that when auction route was not being followed (as TRAI did not recommend it), FCFS was the most just and fair principle that could be applied to a situation of this kind. The Committee are, however, concerned to point out that the decision to adopt FCFS criteria for issue of UAS Licences was taken in undue haste and was not based on comprehensive deliberation that merited the issue in question. The Committee, therefore, hold the view that the manner in which such an important decision was taken left a lot to be desired.

10.29 The Committee find it disturbing to note that no Guidelines were issued detailing the procedure to be followed for grant of UASL when initially the decision was taken on 17 November, 2003 to accept the applications similar to the one adopted for Basic Service Licences. Similarly, when the decision was taken on 24 November, 2003 to follow First-Come-First-Served as the guiding principle for grant of UASL, it was also not published for the benefit of prospective operators. While conceding that the Guidelines and procedures were not spelt out, Shri Vinod Vaish, the former Secretary stated that there was an understanding among the Cellular and Fixed Service Operators who were consistently in touch with the Department of Telecommunications. On the question of whether potential new entrants were kept in the dark and the existing operators were in a favourable position on account of non-publishing of procedure for grant of UASL, the former Secretary viewed it as only a theoretical possibility as no new operators applied for licences during that period. In the opinion of the Committee, the justification adduced by the former Secretary are not tenable and the Department of Telecommunications was at fault for not publishing the adopted procedure which is against the canon of fairness and transparency while implementing the UASL Regime.

10.30 The Department of Telecommunications issued 28 UAS Licences till September, 2004 since the introduction of the new licensing regime in November, 2003. After enhancement of FDI in telecom sector from 49% to 74%, the Department of Telecommunications on 14 December, 2005, issued broad Guidelines for Unified Access Services Licences. 22 new UASs were issued in the year 2006 and one new UASL was issued in the year 2007. Prior to January, 2008, UAS licences were being issued on FCFS basis mainly as per the date of application for grant of UAS Licence in that particular service area. However, the Committee note that in one case in 2004, on two applications of different dates in Uttar Pradesh (West) service area, LOIs were issued simultaneously but the UAS licence was granted first to the later applicant.

10.31 The Committee note that the licence fee for UAS Licences was reduced by 2%, across the board, with a further reduction by 2% of AGR for the first two Cellular licences (for a period of 4 years with effect from 1 April, 2004). The proposal to the above effect, initiated by the then Minister of Communications and Information Technology was approved on file by the then Minister of Finance on 12 December, 2003. It is pertinent to mention that the Cabinet, on 31 October 2003, while considering the recommendations of the Group of Ministers on telecom matters found that there appeared to be no case for giving any compensation package to the Cellular operators, because of the perception that the finances of the cellular operators were strained and because of the effect these might have on financial institutions. However, the Cabinet decided that the Ministry of Finance would address the difficulties of the Cellular Operators, if any, separately and appropriately. The former Secretary informed the Committee that at that point of time the entire telecom industry, compared to the international situation was very heavily taxed. He also mentioned that the Department of Telecommunications had received letters from TRAI advising that the Government should charge only a token licence fee based on administrative expenses and other things and not treat the telecom sector as a source of revenue. He stated that TRAI also wrote letters to the Department indicating that the telecom sector was having a very high licence fee and that needed a reduction. Butressing his argument, the former Secretary submitted that the Government of the day definitely felt that the NTP-1999 had come out with the observation that the private sector had not been able to establish a foothold in the growth of the telecom industry and the Government had to assist it and the future of the telecom in the country could be benefitted by enabling the private sector to grow and enhance the competition. Therefore, the Government had to play a facilitating role to enable the private sector to play that kind of a function. What concerns the Committee is the fact that the Department of Telecommunications obtained study reports conducted by the Cellular Industry themselves and passed on this input to the Ministry of Finance which undertook an exercise to address the difficulties of the operators. The Committee fail to understand as to why the Department of Telecommunications themselves did not carry out an independent study by experts to gauge the financial health of the Cellular Industry and provide those inputs to the Ministry of Finance helping them to arrive at a conclusion. The Committee are certainly not impressed about the manner in which the issue of licence fee reduction was dealt with both by the Ministry of Finance and the Department of Telecommunications and strongly feel that enough space was left for an objective examination of the matter. As per the assessment of the Ministry of Finance, the financial implications of the across the board reduction of two per cent of licence fee was estimated at Rs.968 crore for the first four years and Rs.885 crore per annum thereafter. The Committee are inclined to conclude that the concessions in terms of reduction in licence fee extended to the cellular industry caused a loss to the exchequer to the tune of financial implications as indicated above.

10.32 The Committee find that the Government introduced the Unified Licensing Regime to streamline many teething problems that were being encountered by the telecom sector, particularly, technology enabled transgression of licensees into the realm of others and the resultant quagmire of litigations and its retarding impact on the sector. It is also given to

understand that the Communication Convergence Bill, 2001 was tailored to regulate the telecom sector subsequent to the introduction of the Unified Licensing Regime, which, in turn, was to be introduced in two phases. The first one with Unified Access Service licensing for six months and then the umbrella regime of Unified Licensing. However, the first phase of UASL that contained many benefits intended only for existing operators who migrated to the new system became a permanent fixture. The Committee note that the Communication Convergence Bill, 2001 got lapsed on the dissolution of the Lok Sabha in 2004. A close scrutiny of the introduction of the Communication Convergence Bill revealed that there was a deadlock between the Ministry of Information & Broadcasting and Department of Telecommunications which deterred the whole process of reforms sought through this Bill. In terms of the Cabinet decision dated 31 October, 2003 charting the course for Unified Licensing Regime, TRAI sent its recommendations on Unified Licensing Regime to the Department of Telecommunications on 13 January, 2005. The recommendations of TRAI dated 13 January, 2005 were deliberated in the Department of Telecommunications. The Committee have been informed that in the absence of comments from the Ministry of Information & Broadcasting, the Department of Telecommunications was not appropriately positioned to decide/accept the TRAI's recommendations on Unified Licensing. In the above background, the view taken by the Department of Telecommunications at that time was that as the Communication Convergence Bill, 2001 got lapsed on dissolution of Lok Sabha in 2004, the implementation of Unified Licensing Regime would have appeared that what could not be done directly was being admitted indirectly through this recommendation. Further, according to the Department of Telecommunications the policy of Communication Convergence was not being pursued by the Government any more. At that time, it was also felt by the Department of Telecommunications that two different authorities were hurting the growth process and issues could be examined without broadcast services being part of the Unified Licensing. The Department of Telecommunications felt that at an appropriate time, they would seek TRAI's recommendation for Unified Licensing of all telecom services. In this backdrop, on 10 July, 2007 the Department of Telecommunications decided not to accept the recommendation of TRAI on Unified Licensing Regime. Thus, the ultimate objective of Unified Licensing Regime did not materialise. The more alarming fact is that the initial migratory phase of Unified Access Service Licensing continues even today without being revisited despite the objective of Communication Convergence Bill not materialising.

10.33 The Committee note that M/s Dishnet DSL Limited applied for UAS Licences for 8 Service Areas in Assam, Bihar, Madhya Pradesh, Jammu & Kashmir, North-East, Orissa, Himachal Pradesh and West Bengal including Andaman and Nicobar on 5 April, 2004. LOI was issued for all the 8 Service Areas on 6 April, 2004. On 20 April, 2004, M/s Dishnet DSL Limited requested for extension of time by 90 days for signing licence agreement for Madhya Pradesh Service Area. On 21 April, 2004, M/s Dishnet DSL Limited also applied for UAS Licence in Uttar Pradesh (East) and Uttar Pradesh (West) areas. On 21 July, 2004, a request was also made for change of name of the company from M/s Dishnet DSL Limited to M/s Dishnet Wireless Limited. A scrutiny of records made available to the Committee revealed that the manner of processing applications of M/s Dishnet DSL Limited for UAS Licences puts into question the probity of procedure followed by the Department of Telecommunications. The Committee find that there were delays at different stages including at the office of the then Minister of Communications and Information Technology in taking decision on the applications of M/s Dishnet DSL Limited. It is pertinent to mention that despite favourable legal opinion made available to the Department, the processing of the case of M/s Dishnet DSL Limited appear to have been delayed without any palpable reason. The Committee are of the firm opinion that issuance of licences to M/s Dishnet DSL Limited was stalled on several occasions citing frivolous reasons. It is disquieting to note that the applications of M/s. Dishnet DSL Limited were finally approved by the Minister of Communications and Information Technology on 16 May, 2006 i.e. after a lapse of near about two years. Taking note of the fact that the Central Bureau of Investigation inquired into this matter and have reportedly

registered a case against the then Minister of Communications and Information Technology and others pertaining to the issue in question, the Committee refrain from commenting anything further in the matter. The Committee hope that the investigative agency will pursue the case to its logical end.

10.34 In the whole episode, it is palpable to the Committee that such an important step like Unified Licensing has been hanging fire as the only attempt to create a legal framework for it did not materialize. It cannot but be inferred that the Department of Telecommunications or the Government of the day did not do all that they could have done to implement the Unified Licensing regime. A workable option could have been to unify all services except broadcasting services as the latter was the bone of contention between the Ministry of Information & Broadcasting and the Department of Telecommunications. This, incidentally, dawned to TRAI after five years when they recommended for Unified Licence that excluded broadcasting licences in their recommendations dated 11 May, 2010. The Committee are, therefore, inclined to conclude that the spirit of the TRAI's recommendations as contained in Cabinet decision dated 31 October, 2003 which envisioned a new era of Unified Licensing for de-linking spectrum from licensing remained a reality on paper only. In view of the above, the Committee hold the Department of Telecommunications entirely responsible for not implementing the Unified Licensing Regime and call for an objective review of the decision of the Department of Telecommunications to continue with Unified Access Service Licensing in the circumstances that immediately succeeded the impasse on the Communications Convergence Bill.

Unified Access Service Licences in 2008

10.35 Since introduction of UAS Licensing Regime in 2003, 51 new UAS Licences were issued till March, 2007 on the policy of continuous award on First-Come-First-Served (FCFS) basis. Upto March 2007, 159 licences had been issued for providing Access Services (CMTS/UASL/Basic) in the country and there were 5 to 8 Access Service Providers in each Service Area. As continuous issue of licences, as per the stated policy, was increasing the demand on spectrum in a substantial manner, the Government was contemplating to review its policy. Accordingly, the Department of Telecommunications on 13 April, 2007 requested TRAI to furnish their recommendations on the issue of limiting the number of Access Service Providers in each Service Area and review of the terms and conditions in the Access Providers Licences including usage of Dual Technology spectrum. There were 53 UASL applications pending at the time of this reference made to TRAI. Prior to the reference made to TRAI, applications were being processed on continuous basis. On 17 July, 2007, the Department of Telecommunications, with the approval of the Minister of Communications and Information Technology, decided that further processing/examination of pending UASL applications might be undertaken only after receipt of recommendations of TRAI and the decisions thereof. It was also decided that any fresh application received in future for a new UAS Licence might be considered only after a suitable decision was taken in the matter.

10.36 On 28 August, 2007, TRAI gave its recommendations suggesting *inter-alia* that: "The Authority is not in favour of suggesting a cap on the number of Access Service Providers in any Service Area. It is not advisable to exogenously fix the number of Access Service Providers in a market which is in a dynamic setting". The Authority also recommended that in future, all spectrum, excluding the spectrum in 800, 900 and 1800 bands (2G spectrum) should be auctioned so as to ensure efficient utilization of this scarce resource. In the context of 2G Spectrum, the Authority was conscious of the legacy, *i.e.* prevailing practice and the overriding consideration of level playing field. TRAI also recommended that a licensee using one technology might be permitted on request, usage of alternate technology and thus, allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternate technology or which could be paid by a new licensee going to

use that technology. The recommendations of TRAI were considered by the Telecom Commission on 10 October, 2007 and finally approved by the Minister of Communications and Information Technology on 17 October, 2007 with certain changes. While approving the recommendations of TRAI, the Minister of Communications and Information Technology also directed that "...Pending requests of existing UASL operators for use of dual/alternate wireless access technology should be considered and they should be asked to pay the required fees. Allocation of spectrum in alternate technology should be considered from the date of such requests to WPC subject to payment of required fees." The acceptance of the recommendations of TRAI by the Government was put out in public domain through a press note dated 19 October, 2007. The Committee's attention was drawn to some of the reports available in public domain that questioned the validity of the approval accorded to the recommendations of TRAI because that was not considered by the Full Telecom Commission. In this context, the Committee examined the resolution dated 11 April, 1989 of Government of India through which the Telecom Commission was set up and the Rules of Business governing the functioning of the Telecom Commission. As prescribed in the Rules of Business of Telecom Commission, quorum for a meeting of the Commission requires 3 full time members, present in person, including the Chairman. It provides that at meetings which the Chairman considers expedient to be held in his absence, the requirements shall be deemed to have been met if the Chairman authorizes another member to place before the Telecom Commission and bring on record his views. However, Member (Finance) is required to be ordinarily present at meetings of the Commission. The Rules of Business also provides that if he is unable to attend a meeting at which matters having financial implications are considered, he may authorize another member to place before the Commission and bring on record his views. In this context, Shri D.S. Mathur, then Secretary, Department of Telecommunications, in evidence, also clarified that nowhere in the Rules of Business of Telecom Commission, it is said that when full time members of the Commission take a decision, that would not be valid. From the records made available, the Committee discern that out of 233 meetings held by the Telecom Commission during the period 1998 to 2009, Internal Telecom Commission meetings were held on 189 times whereas Full Telecom Commission met only for 44 times. Evidently, decisions taken on any matter considered by the Telecom Commission in a meeting which fulfills the prescribed quorum and requisite stipulations in terms of Rules of Business of the Commission, are considered valid. Hence, it can unequivocally be concluded that the confusion prevailing in public domain questioning the sanctity of decision taken by Internal Telecom Commission is ill founded.

10.37 The Committee note that pending consideration of the recommendations of TRAI dated 28 August, 2007, 167 applications from 12 companies for 22 Service Areas had been received by the Department of Telecommunications till 24 September, 2007. At that stage, the Department of Telecommunications felt that it might be difficult to handle such large number of applications at any point of time. Accordingly, the Department of Telecommunications on 24 September, 2007 proposed to announce 10 October, 2007 to be the cut-off date for receipt of new UASL applications till further orders. While doing so, the Department of Telecommunications kept in view allowance of reasonable time period of 15 days to all who wished to submit new UASL applications so that the decision may not be challenged. Based on this proposal, the Minister of Communications and Information Technology decided that "In view of large number of applications pending and to discourage speculative players, we may close receiving applications on 1 October, 2007, i.e., one month from the date of TRAI's recommendations". A Press Release to this effect was issued on 24 September, 2007 which appeared in Newspapers on 25 September, 2007. The question arose whether by fixing a cut-off date, the Department of Telecommunications put an artificial cap on the number of entrants in a Service Area contrary to the recommendations of TRAI which suggested 'No Cap' on the number of entrants. Having regard to the fact that there was a spurt in receipt of applications after the recommendations of TRAI suggesting 'No Cap', the Committee are of the considered view that some methodology ought to have been

adopted by the Department for administrative convenience, to handle such large number of applications consistent with laid down procedure and policy of the Government. Thus, announcement of a cut-off date of interim nature, which never intended to stall receipt and consideration of applications in future, appeared all the more essential to deal with the unprecedented situation. In the opinion of the Committee, the decision may not be termed as inconsistent either with broad intent of NTP-1999 or the spirit of the recommendations of TRAI. Moreover, since the matter was immediately placed in the public domain through a press release, the procedure followed was transparent.

10.38 Pursuant to the introduction of UASL regime, based on TRAI recommendations dated 28 August, 2007, the use of Dual Technology was approved by the Government on 17 October, 2007. TRAI had recommended that licensee using one technology may be permitted on request, usage of alternate technology subject to payment of the same amount of fee which has been paid by existing licensee using the alternate technology or which could be paid by a new licensee going to use that technology. As regards, *inter-se* priority for spectrum allocation, TRAI was of the view that a licensee holding dual technology be treated like any other existing licensee in the queue and the Department of Telecommunications should have a criteria in this regard for the existing licensee. In this regard, the competent authority had decided that allocation of spectrum in alternate technology should be considered from the date of such request made to WPC subject to payment of prescribed fee. The Committee note that on 18 October, 2007 'in-principle' approval was granted to the pending applications of 3 licensees (Reliance Communications Limited for 20 Service Areas, Shyam Telelink Ltd. for Rajasthan Area and HFCL Infotel Ltd. for Punjab Service Area) for availing Dual Technology licences and spectrum. The Committee consider that granting 'in-principle' approval for Dual Technology spectrum even before pronouncement of the policy in public domain, which was done on 19 October, 2007, was something unusual. The Committee also take note of the reported objection taken in the matter by then Secretary, Department of Telecommunications. Reliance Communications Ltd. which submitted 14 applications on 6 February, 2006 seeking permission for use of GSM technology, paid the requisite fee on 19 October, 2007. Start-up spectrum was granted to them for five Service Areas on 10 January, 2008 and remaining 9 Service Areas on 11 January, 2008. HFCL Infotel Ltd. and Shyam Telelink Ltd. who submitted similar applications on 11 July, 2006 and 7 August, 2007 respectively, paid the requisite fee on 12 December, 2007 and start-up spectrum was allocated to them on 10 September, 2008 and 23 December, 2008 respectively. TATA Teleservices Ltd. which applied for use of GSM technology on 19 October, 2007, 'in-principle' approval was granted for the same on 10 January, 2008. Though they made the payment of requisite fee on 10 January, 2008, start-up spectrum was allocated to them between 22 April, 2008 and 9 March, 2009. The Committee note that the Department of Telecommunications while making a reference to the Ministry of Law and Justice dated 26 October, 2007 had clubbed the issue of Dual Technology Licence and Spectrum sought by TATA Teleservices Ltd. along with new UASL applicants. Considering the fact that the matter regarding *inter-se* seniority of the applicants for Dual Technology Spectrum and spectrum for new licences had already been decided and the Dual Technology Spectrum applicants were to be treated at par with the existing licensees and not with applicants for new licences, the application of TATA Teleservices Ltd. was meted out a differential treatment.

10.39 The Department of Telecommunications had received 575 applications for UAS licences till the cut-off date i.e. 1 October, 2007. The Committee have been given to understand that the procedure followed hereto for grant of LOIs/Licences in respect of UASL applications had been to process them sequentially in order of receipt (date-wise) and take up the next application after the earlier applicant had been given LOI, as the number of applications were limited and all applications were assured that they would get LOI/licence/spectrum in near future. According to the Department of Telecommunications, in this given scenario, the number of applications was

very large and spectrum was limited and it might not have been at all possible for the Government to provide LOI/Licence/Spectrum to all applicants, if the existing procedure was followed. Moreover, existing procedure of sequential processing would also lead to inordinate delays depriving the general public of the benefits which more competition would bring out. To deal with such an unprecedented situation, the Department of Telecommunications felt the need to adopt a methodology which synchronizes with legal base in processing of pending UASL applications and allotment of spectrum to various categories of spectrum seekers. The Committee note that in the aforesaid background, the Department of Telecommunications on 26 October, 2007 made a reference to the Ministry of Law and Justice seeking the opinion of the Attorney General/Solicitor General on certain alternatives (Annexure-29) proposed to be adopted for processing the new UASL applications and allotment of spectrum for Dual Technology. Since a decision had already been taken to permit Dual Technology Spectrum to the existing licensees based on the recommendations of the Regulator, the Committee hold the view that this issue need not have been clubbed with the issue of processing of new UASL applications in the reference made to the Ministry of Law and Justice. On 1 November, 2007, the Minister of Law and Justice opined that "In view of the importance of the case and various options indicated in the statement of the case it is necessary that the whole issue is first considered by an Empowered Group of Ministers and in that process legal opinion of the Attorney General can be obtained". The Committee find from the available records that the opinion rendered by the Minister of Law and Justice was discussed in the Department of Telecommunications in the presence of the Minister of Communications and Information Technology. It was felt in the meeting that the proposed advice was out of context and the Department was advised to follow the existing policy for grant of new UAS licences.

10.40 The Committee's examination has revealed that on 2 November, 2007, the Department of Telecommunications initiated a proposal intending that applications received till the announcement of cut-off date *i.e.* 25 September, 2007 may be processed as per the existing policy and decision on remaining applications may be taken subsequently. This proposal was reportedly mooted to avoid any legal implications of initial cut-off date *i.e.* 1 October, 2007. It was also indicated that 60 MHz of spectrum in 1800 band was available which could be utilised for new licences and additional requirement of existing operators. Since the availability of spectrum was not immediately guaranteed in all the Service Areas as it needed to be vacated by the Defence, a clause was proposed to be inserted in the LOI that spectrum allocation was not guaranteed and shall be subject to availability. A decision was sought to be taken on the number of LOIs to be issued in each Circle. While deciding on the number of LOIs it was to be taken into account that only serious players may deposit the entry fee who could afford non-availability or delays in spectrum allocation and roll out using wire-line technology only. While approving the aforesaid proposal, the Minister of Communications and Information Technology decided that LOI may be issued to the applicants received upto 25 September, 2007. In Committee's view, the decision taken to advance the cut-off date does not appear to be fair. It is needless to mention that while taking the decision to modify 1 October, 2007 as the cut-off date, the Department of Telecommunications should have clearly calculated the spectrum availability and published the same so as to make the decision making process logical and transparent. Disquietingly, the decision was to advance the cut-off date also not immediately put out in the public domain through a press release as was previously done by the Department when the initial cut-off date was pronounced as 1 October, 2007. To the utter dissatisfaction of the Committee, the decision taken on 2 November, 2007 was notified only on 10 January, 2008, when LOIs for new UASL were issued. This procedural infirmity has, no doubt, cast cascading shadow on the decision making process of the Administrative Ministry, which is highly deplorable.

10.41 The Committee note that on 7 November, 2007 a note was put up by the Department of Telecommunications indicating the procedure to be adopted for grant of UAS licences. It stated that the pending applications of the UASL shall be processed as per the existing policy.

As per the existing policy, the LOIs were to be granted based on date of application to satisfy the principle of FCFS. This principle was stated to be placed before Parliament in reply to Rajya Sabha Question No. 1243 answered on 23 August, 2007. On 7 November, 2007, the Minister of Communications and Information Technology approved the aforesaid procedure to be adopted by the Department for processing of pending applications for grant of UAS licences. After the procedure was approved, draft LOI was submitted for vetting by the Internal Legal Advisor of the Department of Telecommunications on 8 November, 2007. On 8 November, 2007, DDG (AS) in the same note *inter-alia* recorded: "LA(T) was of the opinion that matter needs to be examined by the Law Ministry, as this was earlier referred to Law Ministry. This will be discussed within the Department of Telecommunications separately". However, the Committee could not find from the records as to what happened to the suggestion of the Internal Legal Advisor. Thereafter the file was sent to Licensing Finance Branch of the Department for vetting of draft LOI. In the context of vetting draft LOI, Licensing Finance Branch observed "LOIs are issued in case the applicants are eligible for grant of licence. We have examined about 22 files relating to application for UASL licence and most of the applications have been found wanting in one respect or another. In such a situation desirability of issuing LOI conveying the approval on behalf of the President of India for award of licence needs to be considered afresh from all angles specially the legal angle. The current proposal is to issue LOI along with an annexure seeking compliance/clarifications which will have direct bearing on the eligibility of the applicant and date of his eligibility. LOIs issued in the past never had such an annexure". The Licensing Finance Branch had accordingly suggested modification in the draft LOI to safeguard the aforesaid deficiency in the UASL application. It was further recorded that the para No. 3 in LOI making the date of payment of Entry Fee as the priority date had been deleted. In this context, they observed "however, it would be appropriate to clarify as to what the priority date would be. It appears logical to keep the date of application as date of priority provided the applicant is able to establish that he is eligible as on the date of application and is also eligible when the LOI is being issued. It is suggested that this should be clarified to the applicants by inserting a suitable para in the LOI for the sake of clarity especially in view of the large number of applications received". The note further states that "in para 5 of the draft LOI, it has been clarified that the payment of entry fee shall not confer right on the licensee for the allocation of radio spectrum which shall be allotted as per existing policy/guidelines as amended from time to time subject to availability. In this regard, it is pointed out that the present occasion is unique in the sense that a large number of applications are being processed simultaneously and it would be appropriate for all concerned to know the likelihood of allotment of spectrum to them. NTP-1999 already stipulates that 'availability of adequate frequency spectrum is essential' particularly in these days when it is the wireless services that are the order of the day and these services cannot be provided without spectrum. Hence, it would be appropriate that the prospective licensees know the approximate time within which they will get spectrum. In any case, for spectrum allocation also, the date of priority should also be the same as the date of his application provided he is found eligible on the date of application and he deposits the Entry Fee and complies to the LOI within the stipulated time". The Committee are concerned to point out that despite a significant observation made by Licensing Finance Branch, the availability of spectrum was never put out in the public domain till the issuance of LOIs on 10 January, 2008. In the concluding paragraph, the Licensing Finance Branch recommended that the LOI be granted in the existing legally vetted format only after all the eligibility conditions were met and the application was complete in all respects. The note was then submitted to Member (Finance), who in her note dated 30 November, 2007 submitted to the Minister of Communications and Information Technology, suggested that the comments of Licensing Finance Branch be considered. In her note, drawing reference to letter dated 22 November, 2007 received from the Department of Economic Affairs, she mentioned that the issue of entry fee for the new UAS licences should be examined in-depth before any further steps were taken in the matter. The Minister of Communications and Information Technology in his noting dated 4 December, 2007 while

expressing displeasure over the comments made by Licensing Finance Branch and Member (Finance) stated that the matter of entry fee had been deliberated in the Department several times in the light of various guidelines issued by the department and recommendations of TRAI. Accordingly decision was taken that entry fee need not be revised. The Committee, however, could not find any record to substantiate the claim of the former Minister of Communications and Information Technology that any decision was taken for non-revision of entry fee. It was stated that the approval (obtained on 7 November, 2007) regarding issue of LOIs should be implemented and for this purpose, the LOI proforma as issued in the past may be issued for LOIs in these cases also. It was also stated that separate letter seeking duly signed copies of all the documents submitted at the time of applying for UASL as per existing guidelines may be obtained. The Committee note that with the insistence on a separate letter seeking duly signed copies of all the documents, it was mandated that eligibility on the date of application was essential requirement, which was a clear departure from the procedure followed by the Department till then.

10.42 Pertinently, Shri D.S. Mathur, the then Secretary, Department of Telecommunications while deposing before the Committee stated that he along with the other members of the Telecom Commission was in favour of revising the old entry fee but the Minister of Communications and Information Technology did not agree to any such revision. The Committee, however, could not find any such proposal on record that suggested revision of entry fee for new UASL by the Department of Telecommunications and submitted for consideration of the Competent Authority. The Committee also note that Shri D.S. Mathur in his presentation dated 20 November, 2007 made before the Cabinet Secretary stated that licences to the new UASL applicants would be "based on existing criteria and not through auction route". Responding to the then Finance Secretary about the possibility of considering the auction route for 2G spectrum, during presentation Shri D.S. Mathur stated that "This matter has been dealt with. TRAI has recommended that for 2G services existing criteria should continue. The Department has already approved it on the basis of TRAI recommendations. A basis for following existing criteria was that there should be a level playing field for a new entrant *vis-à-vis* existing big players. However, for 3G spectrum, a new service, the Department is likely to go in for auction. Finance Secretary also indicated that if an exchange for buying and selling of communication frequencies is feasible, spectrum prices would be properly discovered. Such an exchange exists in the USA, but it should be for the same product/services compatible to frequency allocated for specific usage". In the written note furnished to the Committee, Shri K.M. Chandrasekhar, stated: "From the material I have received from the Cabinet Secretariat in response to the queries made by the Hon'ble JPC, I see no record of the Telecom Secretary having raised the issue of differences with his Minister in his correspondence with the Cabinet Secretariat or in his letters to the Ministry of Finance, copied to the Cabinet Secretariat". From the foregoing, the Committee are inclined to conclude that the testimony of Shri D.S. Mathur, former Secretary, Department of Telecommunications before the Committee stand in variance to facts available on record. The Committee wish that his desposition before the Committee should have been in conformity with the facts.

10.43 As a follow-up to the presentation made before the Cabinet Secretary, the Finance Secretary in his letter dated 22 November, 2007 addressed to Secretary, Department of Telecommunications raised issues relating to cross-over fee charged for Dual Spectrum which was based on a price discovered in 2001. He cited that in view of the financial implications, the Ministry of Finance should have been consulted before finalising the decision taken in the matter of Dual Spectrum. The Finance Secretary urged that the issues raised be reviewed and reported back to the Ministry of Finance. He also urged upon the Secretary, Department of Telecommunications to stay all further actions to implement the licences in respect of Dual Spectrum. In response, the Secretary, Department of Telecommunications in his letter dated

29 November, 2007 *inter-alia* stated: "The entry fee was finalised for UAS regime in 2003 based on the decision of the Cabinet. It was decided to keep the entry fee for the UAS licence the same as the entry fee of the fourth cellular operator, which was based on bidding process in 2001. The Dual Technology licences were issued on TRAI recommendations of August, 2007. TRAI, in its recommendations dated 28 August, 2007, has not recommended any changes in entry fee/annual licence fee and hence no changes were considered in the existing policy". The Committee have, however, been informed that after receiving the letter from the Department of Telecommunications, a self-contained note was prepared by Ms. Shyamala Shukla, Director (Infrastructure) on 17 December, 2007. Though the note was put up in the file marking it to JS and Additional Secretary (Economic Affairs), the matter was stated to be not processed further in the file. The Ministry of Finance further informed the Committee that the then Additional Secretary (Economic Affairs) on 9 January, 2008 had put up a note, in a separate file, to the then Minister of Finance, enclosing position paper on spectrum policy. The subject header of the note reportedly mentioned the references of the Department of Economic Affairs' letter of 22 November, 2007 and Department of Telecommunications' reply of 29 November, 2007. The Ministry of Finance have informed the Committee that no communication was sent by the Department of Economic Affairs in response to the letter dated 29 November, 2007 from the Department of Telecommunications. From the sequence of events, the Committee gather the impression that the Ministry of Finance was in agreement with the position explained by the Department of Telecommunications in respect of cross-over fee charged for allowing usage of Dual Spectrum Technology by the existing licensees.

10.44 The Committee note that on 2 November, 2007, the Minister of Communications and Information Technology wrote a letter to the Prime Minister apprising him about the latest developments in the Department of Telecommunications that included, acceptance of recommendations of TRAI dated 28 August, 2007, decision taken by the Department on fixing a cut-off date of 1 October, 2007 on account of receipt of unprecedented number of applications, opinion received from the Ministry of Law and Justice being considered as out of context, decision of the Department to continue with the existing policy (FCFS) for processing of applications received upto 25 September, 2007 and processing of the remaining applications at a later date, if any spectrum was left available. It was categorically mentioned in his letter that the Department of Telecommunications was not deviating from the existing procedure. In the meantime, the Prime Minister in his letter dated 2 November, 2007 urged upon the Minister of Communications and Information Technology to address *inter-alia* the issues namely, (a) processing of large number of applications received for fresh licences against the backdrop of inadequate spectrum to cater to overall demand, (b) introduction of a transparent methodology of auction, wherever legally and technically feasible, and (c) revision of entry fee, which is currently benchmarked on old spectrum auction figures. In response to this letter, the Minister of Communications and Information Technology on 2 November, 2007 reiterated that there was no single deviation or departure in the rules and procedure contemplated in the decisions taken by the Department and as such full transparency was being maintained. On the issue of auction of spectrum, the Prime Minister was apprised that this aspect was considered by the TRAI and the Telecom Commission and was not recommended as the existing licence holders who are already having spectrum upto 10 MHz per Circle have got it without any spectrum charge. According to the Minister of Communications and Information Technology, it will be unfair, discriminatory, arbitrary and capricious to auction the spectrum to new applicants as it will not give them level playing field. On the question of availability of spectrum, it was stated that 60 to 65 MHz, including spectrum likely to be vacated by Defence Services, was available for 2G. The Prime Minister was told that there was enough scope for allotment of spectrum to few new operators even after meeting the requirements of existing operators and licensees. It was also told that an increase in number of operators will certainly bring real competition which will lead to better services and increased teledensity at lower tariff.

10.45 On 26 December, 2007, the Minister of Communications and Information Technology *inter-alia* informed the Prime Minister about the decision taken on the procedure of issue of new licences. In his letter, he stated "DOT has been implementing a policy of First-Come-First-Served for grant of UAS licences. The same policy is proposed to be implemented in granting licence to existing applicants. However, it may be noted that grant of UAS licence and allotment of Radio Frequency is a three stage process.

Issue of Letter of Intent (LOI): DOT follows a policy of First-Come-First Served for granting LOI to the applicants for UAS licence, which means, an application received first will be processed first and if found eligible will be granted LOI.

Issue of Licence: The First-Come-First Served policy is also applicable for grant of licence on compliance of LOI conditions. Therefore, any applicant who complies with the conditions of LOI first will be granted UAS licence first. This issue never arose in the past as at one point of time only one application was processed and LOI was granted and enough time was given to him for compliance of conditions of LOI. However, since the Government has adopted a policy of "No Cap" on number of UAS Licence, a large number of LOIs are proposed to be issued simultaneously. In these circumstances, an applicant who fulfills the conditions of LOI first will be granted licence first, although several applicants will be issued LOI simultaneously. The same has been concurred in by the Solicitor General of India during the discussions.

Grant of Wireless Licence: The First-Come-First Served policy is also applicable for grant of Wireless Licence to the UAS Licensee. Wireless Licence is an independent licence to UAS licence for allotment of Radio Frequency and authorising launching of GSM/CDMA based mobile services. There is a misconception that UAS licence authorises a person to launch mobile service automatically. UAS licence is a licence for providing both wire and wireless services. Therefore, any UAS licence holder wishes to offer mobile service has to obtain a separate Wireless Licence from DOT. It is clearly indicated in Clauses 43.1 and 43.2 of the UAS Licence agreement of the DOT.

Since the file for issue of LOI to all eligible applicants was approved by me on 2 November, 2007, it is proposed to implement the decision without further delay and without any departure from existing guidelines."

The Committee wish to point out that the procedure outlined as above regarding FCFS criteria was a misrepresentation of facts and in tactic deviation from the existing procedure. As per this policy, the applications which were received first in the Department of Telecommunications were issued LOI first. The applications received later were not considered till the applications received earlier were decided and allocated LOI. In case approvals for more than one LOI in the same Telecom Circle was received simultaneously, the earlier applicant was issued LOI first and the latter one was issued LOI at least a day after, in order to maintain the same priority for signing of UAS licence as well as allocation of spectrum. In view of the above, the Committee are inclined to conclude that the Prime Minister was misled about the procedure decided to be followed by the Department of Telecommunications in respect of issuance of UAS licences. Further, the assurance given by the Minister of Communications and Information Technology in all his correspondence with the Prime Minister to maintain full transparency in following established rules and procedures of the Department stood belied.

10.46 The Committee's examination has revealed that while putting up a note dated 7 January, 2008 for processing UASL applications received upto 25 September, 2007 Director (AS-I) reiterated the existing policy and noted that "sequence of granting LOI/UAS licence has been maintained till now according to date of respective application for a particular Service

Area". In his note he raised the issue of date of eligibility and DDG (AS) clarified that decision was already taken by the Minister of Communications and Information Technology that eligibility on the date of application (25 September, 2007 in this case) was to be considered for examining the cases. DDG (AS) then reproduced parts of the letter dated 26 December, 2007 addressed by the Minister of Communications and Information Technology to the Prime Minister on policy matter regarding grant of UAS licences (as mentioned in paragraph 6.83) and mentioned that those were to be treated as policy directives for licensing matter. The Committee note that when this matter was put up to the then Secretary, Department of Telecommunications, he attached a draft press release for approval of the Minister of Communications and Information Technology. On 7 January, 2008, the Minister of Communications and Information Technology recorded in the same note "approved: pl. obtain Solicitor General's opinion since he is appearing before the TDSAT and High Court, Delhi. Press release appd(sic) as amended". The file was then submitted to the Solicitor General who, on 7 January, 2008 recorded: "I have seen the notes. The issue regarding new LOIs are not before any court. What is proposed is fair and reasonable. The press release makes for transparency. This seems to be in order". The press note was released on 10 January, 2008. The press release *inter-alia* contained "DoT has been implementing a policy of First-Come-First-Served for grant of UAS licences under which initially an application which is received first will be processed first and thereafter if found eligible will be granted LOI and then who so ever complies with the conditions of LOI first will be granted UAS licence". The Committee find from the records that the Minister of Communications and Information Technology deleted the last paragraph of the press release "However if more than one applicant complies with LOI condition on the same date, the *inter-se* seniority would be decided by the date of application". In so amending, the Minister of Communications and Information Technology had minuted " 'X' is not necessary as it is a new stipulation".

The Committee have been informed by the Central Bureau of Investigation that the amendment in the draft press release was effected by the Minister of Communications and Information Technology after the file was seen by the then Solicitor General. The Central Bureau of Investigation stated that the official note dated 7 January, 2008 was forged by the Minister of Communications and Information Technology with later inclusion of words "press release appd (sic) as amended". The Central Bureau of Investigation has claimed to have forensic evidence to substantiate their finding in this regard. In this context, the then Solicitor General, in evidence before the Committee stated that he had never seen the deletion of the last paragraph of the press release and it was much later during the hearing of the licence cancellation proceedings in the Supreme Court that he saw the deletion in the draft press release. In his written reply submitted to the Committee, Shri A. Raja, MP & former Minister of Communications and Information Technology stated "After I had recorded my approval to the note put up by the Department of Telecommunications officials and directed them to take the opinion of the Solicitor General, my attention was drawn to the fact that the last paragraph of the draft Press Release was not in conformity with what had been approved on the file. It would in fact create a totally new method of grant of licences. I therefore deleted the last paragraph, recorded that it was a new stipulation and also recorded in the file that the Press Release was being approved "as amended" (by me), and only then was the file marked to the Secretary (T) for showing it to the Solicitor General. I wish to emphasise that my note was written prior to the file being sent to the Solicitor General, and nothing was inserted after the file came back from him."

10.47 The Committee note that the issue related to amendment made in the draft press release is part of the chargesheet filed by the Central Bureau of Investigation against the former Minister of Communications and Information Technology and the matter is *sub-judice*. The Committee refrain from commenting anything further in the matter. Notwithstanding the controversy surrounding the deletion made in the draft press release, the Committee take note of the fact that the FCFS criteria as adopted and announced through the press release was a clear departure

from the policy followed by the Department till then. The Committee could not find any record to show on what basis DDG (AS) proposed that the FCFS policy as indicated in the letter of the Minister of Communications and Information Technology dated 26 December, 2007 addressed to the Prime Minister was to be treated as policy directive for licensing matters. While DDG (AS) was fully aware of the policy hereto followed by the Department, it brings into question as to how he could suggest a distorted FCFS criteria as mentioned in the aforesaid letter. The Committee observe that uptill 7 January, 2008 the Department of Telecommunications in all their notings projected the correct picture about the procedure followed by them in issuing UAS licences. From 7 January, 2008 onwards the procedure adopted by them was a clear departure from the established practice. The Committee believe that Shri G.E. Vahanvati, the former Solicitor General was in know of the procedure that was approved by the Department of Telecommunications in the file notings dated 7 January, 2008. This is substantiated by his noting dated 7 January, 2008 in the file of the Department of Telecommunications that says "I have seen the notes. The issue regarding new LOIs are not before any court. What is proposed is fair and reasonable. The press release makes for transparency. This seems to be in order."

10.48 The Committee note that on 10 January, 2008 the Department of Telecommunications issued a press release stating that it had been decided to issue LOI to all applicants eligible on the date of application i.e. 25 September, 2007. The same day, another press release was issued requesting the representatives of the companies to assemble at 3.30 PM to collect LOIs/responses from the Department of Telecommunications. On 10 January, 2008, four special counters were set up in Reception Area, Ground Floor, Sanchar Bhawan, New Delhi for issue of LOIs/response of the Department. On the same day, 121 LOIs/response of the Department of Telecommunications were issued simultaneously on First-Come-First-Served basis to the eligible applicants through the 4 counters. Most of the compliances were received on 10 January, 2008 itself and the difference in receipt of compliances were of the order of few minutes. Compliances from 2 companies were received on 11 January, 2008. In all, 120 UAS Licences were issued between February and March, 2008. 2 more LOIs were issued in July, 2008 and these UAS Licences were signed in August, 2008. Considering the manner in which activities proceeded on 10 January, 2008 in the Department of Telecommunications, the Committee conclude that this was not only unusual but a sad commentary on the functioning of the Department. The Committee cannot but conclude that the evil design of implementation of the process of distribution of LOIs only corroborates to the extent to which FCFS criterion in essence got diluted and the established practices were violated. Considering that all the licences have since been quashed by the Supreme Court, the Committee refrain from making any further comment in the matter.

10.49 Based on a comprehensive note dated 9 January, 2008 along with a concept paper submitted to him by Ms. Sindhushree Khullar, the then Additional Secretary (Economic Affairs), the Finance Minister sent a note dated 15 January, 2008 to the Prime Minister which basically dealt with spectrum charges for 2G spectrum. In his note, he *inter-alia* stated that "Spectrum is a scarce resource. The price for spectrum should be based on its scarcity value and efficiency of usage. The most transparent method of allocating spectrum would be through auction. The method of auction will face the least legal challenge. If Government is able to provide sufficient information on availability of spectrum, that would minimize the risks and, consequently, fetch better prices at the auction. The design of the auction should include a reserve price. The auction could be for a "one-time payment" for the additional spectrum or "an annual rent" for the additional spectrum. Once the price is discovered, additional spectrum should be allocated to all bidders at that price. In addition, if a licensee sells his licence (including the spectrum) to another person, it could be stipulated that the licensee should share with the Government a part of the premium/profit gained by him through the sale. This leaves the question about licensees who already hold spectrum over and above the start up spectrum. In such cases, the past may be treated as a closed chapter and the payments made in the past for additional

spectrum (over and above the start-up spectrum) may be treated as the charges for spectrum for that period. However, prospectively, such licensee should pay for the additional spectrum that he holds, over and above the start-up spectrum, at the price discovered in the auction. This will place old licensees, existing licensee seeking additional spectrum and new licensees on par so far as spectrum charges are concerned". The Committee have been informed that a meeting was held between the Finance Minister and the Minister of Communications and Information Technology on 30 January, 2008. As per the minutes recorded by the then Finance Secretary, the issues concerning the regime for allocation of spectrum was deliberated in the meeting. Further meetings were held between the Finance Minister and the Minister of Communications and Information Technology on 29 May, 2008 and 12 June, 2008. Subsequently, in a meeting held under the Chair of the Prime Minister on 4 July, 2008, the following consolidated position on Spectrum issues between the Finance Minister and the Minister of Communications and Information Technology was discussed with the Prime Minister: "Enhancement of spectrum usage charges by 1% of AGR; Updating the embedded price of spectrum (Rs. 266 crore/MHz - for Pan India operation for GSM operators) using SBI PLR, compounded on a monthly basis, from the date of allotment of additional spectrum beyond 6.2 MHz, upto March 31, 2008, for the purpose of determining the amount payable by existing operators as on March 31, 2008. The indexing factor works out to 1.52 and represents the time value of the price of spectrum for the duration over which it remained unrecovered from the operators. For new operators, who are allotted spectrum beyond 6.2 MHz after March 31, 2008, the putative spectrum price as on March 31, 2008 would be updated to the date of allotment using the same methodology of compounding the SBI PLR on a monthly basis." The Committee note that the sequence of events as brought out above is in fulfilment of Cabinet decision dated 31 October, 2003 which mandated that the Department of Telecommunications and Ministry of Finance would discuss and finalise spectrum pricing formula, which will include incentive for efficient use of spectrum as well as disincentive for sub-optimal usages.

10.50 The Committee note that 85 licences out of 122 licences issued to 13 companies in 2008, did not satisfy the eligibility conditions prescribed by the Department of Telecommunications. This was for the first time pointed out in the Report of the Comptroller and Auditor General of India regarding issue of licences and allocation of 2G spectrum and subsequently taken note of by the Department of Telecommunications. As regards the action taken against these companies, the Committee have been informed that the Department of Telecommunications issued show-cause notices for termination of all the 85 UAS licences. Regarding precaution taken to ensure that fraudulent method are not adopted by the companies to secure licences from the Department, it was stated that the Department of Telecommunications took an undertaking from an applicant company "If at any time, any averments made or information furnished for obtaining the licence was found incorrect, then their application and the licence if granted thereto on the basis of such application, shall be cancelled". In this context, it is relevant to point out that the matter was brought to the notice of the Department of Telecommunications only after the Report of the Comptroller and Auditor General of India pointed out about the ineligible applicants who got licences. It is, therefore, evident that the Department of Telecommunications did not have any mechanism to detect such lapses on their own. Considering that the licences have since been cancelled by the Supreme Court, the Committee note that show cause notices issued by the Department have been rendered redundant. The Committee, however, recommend that the Department of Telecommunications should take specific care to address this grey area in their future policy formulations.

10.51 The roll out obligation stipulate that the licensee is required to cover at least 90 per cent of the area in the Metro Service Areas of Delhi, Mumbai, Kolkata and Chennai within one year of allocation of start-up spectrum. As regards the non-Metro Service Areas, it is required to cover 10 per cent of the District Headquarters (or towns in lieu thereof) in the first year and

50 per cent of District Headquarters within three years of allocation of start-up spectrum. It is mentioned in the terms and conditions of the licence agreement that the licence may be terminated for delay of roll out of services for more than 52 weeks. TRAI intimated the Department of Telecommunications on 18 November, 2010 that most of the licensees had complied with the roll out obligations but with delay (including delay beyond 52 weeks from the due date for compliance). TRAI suggested the Department of Telecommunications for cancellation of those licences which had not met the stipulated criteria for roll out obligations and the time limit of 52 weeks had already been lapsed. TRAI further suggested that in those cases where the time limit had not crossed 52 weeks, Liquidated Damages might be imposed on them. The matter was under examination of the Department of Telecommunications. In the context of cancellation of licences in pursuance of the Supreme Court judgment, any follow-up action may not be called for. However, this is another area that requires stringent monitoring and corrective measures on the part of the Licensor and the Regulator.

Assessment of Financial impact on account of issue of Licences and Spectrum

10.52 In the context of issue of 122 UAS Licences, the Committee note that the C&AG made an assessment of financial impact of the licences issued at the entry fee of Rs 1658.57 crore, the amount that was discovered in 2001. The Audit report has attempted to calculate the financial impact of it on the exchequer based on three indicators on the assumption that any loss ascertained while attempting to value the spectrum in hindsight could be 'presumptive'. The three indicators used are (i) the offer made by S. Tel, an applicant for UAS licences in 2007; (ii) value based on prices discovered for 3G spectrum, and (iii) sale of equity by UAS licensee firms, Unitech and Swan Telecom. S. Tel had offered to pay additional revenue share of Rs 6000 crores for a Pan-India licence over and above the spectrum charge/revenue share payable as per existing policy. The company further enhanced its earlier offer to Rs. 13,752 crore over a period of ten years for allotment of 6.2 MHz GSM spectrum in 900 band. Based on this indicator the loss to the exchequer calculated on account of grant of new UAS licences and 2G spectrum for dual technology and beyond contracted quantity of 6.2 MHz amounts to Rs. 67,364 crores. Using the second indicator, while assessing the value of 2G spectrum issued to the licensees, the Audit has taken into account the value based on prices discovered through auction of 3G spectrum relying on the observations made in the TRAI report dated 11 May, 2010: "While comparing spectral efficiency and other factors, it is fair to compare existing 2.75G systems with 3G systems". On the basis of the 3G rates, the potential loss projected by the Audit is Rs. 1,76,645 crores covering the new licences, dual technology and spectrum allocated beyond contracted quantity. According to the third indicator based on sale of equity by Unitech and Swan Telecom, the presumptive loss figures are Rs. 69,626 crores and Rs. 57,666 crores respectively. The contention of the Audit is that these operators could draw huge foreign investments, even before establishing a foothold in the Indian telecom market, solely by acquiring UAS Licences and the spectrum bundled along with it.

10.53 The institution of the C&AG being a Constitutional authority has the mandate to audit all Government accounts. However, in view of the unprecedented sensation the 'presumptive' loss figures had generated both within the country and abroad, the Committee felt the need to delve into the concept of 'presumptive' loss calculations brought out in the Audit Report. According to the Comptroller & Auditor General (C&AG), S.Tel offer was considered as one of the indicators for calculating the loss because "the Court gave a direction that it is a valid offer." After indepth examination of the offer by S.Tel, it has been established that the petitioner (S.Tel) had sought the quashing of the impugned Press Release dated 10 January, 2008 issued by the Department of Telecommunications to the extent that it had deprived the company of its applications for UAS licences for 16 circles submitted after the cutoff date of 25 September, 2007 being considered. While passing the final order, the High Court of Delhi had directed the respondents (Department

of Telecommunications) to consider the applications submitted by the petitioner. In addition, the Court order said, "The respondent will also while considering the applications of the petitioner submitted on 28.9.2007, consider the letter of the petitioner dated 27.12.2007 wherein the petitioner has made an offer to pay Rs. 17,752 crores towards additional revenue share over and above the applicable spectrum revenue share." Obviously the High Court had not gone into the merits and demerits of the offer made by S.Tel nor *suo moto* held it valid. According to the Department of Telecommunications, they had found the offer by S.Tel contingent and based on the premise that (i) 6.2 MHz GSM spectrum in 900 MHz frequency be provided upfront; (ii) the amount offered was spread over a period of 10 years with major revenues being back loaded and only Rs 250 crores each proposed in first and second year, and (iii) that they be allowed to share active network and infrastructure. In this regard the company contrived with the licence conditions since the licence provided for 4.4 MHz spectrum subject to availability along with specific timeline for payment of licence fee with no provision for sharing of spectrum. Spectrum in 900 MHz had already been allotted to various operators in the past and there was practically no spectrum available in this Band. As a result of this from the 4th CMTS licences issued in 2001 onwards, the startup spectrum being allocated by the Department of Telecommunications was in 1800 MHz band. According to the Department, in spite of being fully aware of the situation, the company had made the conditional offer to mislead the Government. Over and above, the offer was withdrawn before the final judicial pronouncement by the Supreme Court on an SLP without assigning any specific reason. It is also found that the very same Audit Report has termed S.Tel ineligible for allotment of 6 licences which were issued to them on the grounds of false claim of paid up capital. How the inflated offer made by a company that has been listed among the ineligible companies for issue of licences was chosen for calculation of loss on presumptive basis is quite intriguing. In view of the foregoing the offer itself cannot be treated as valid and, as such, the notional loss of revenue to the exchequer calculated on the basis of the S. Tel offer cannot be considered tenable.

10.54 With regard to calculation of loss based on the second indicator, *i.e.* calculating 2G value based on prices discovered for 3G spectrum, Shri R.P. Singh, former DG Audit, Post & Telecommunications informed the Committee that he had not recommended calculation of loss using that as an indicator on the ground that charging for 2G spectrum for roll out was never recommended by TRAI and the Government had never contemplated any charges for the spectrum other than entry fee. Terming this as an incorrect statement, the C&AG during evidence justified the use of the criteria by quoting para 7.39 of TRAI Recommendations dated 27 October, 2003, "...they may introduce additional players through a multi-stage bidding process as was followed for 4th cellular operator" and para 2.73 of TRAI Recommendations dated 28 August, 2007, "In today's dynamism and unprecedented growth of telecom sector, the entry fee determined then is also not the realistic price for obtaining a licence. Perhaps, it needs to be reassessed through a market mechanism". The C&AG also quoted para 3.82 "the Authority, therefore, recommends that the 3G prices be adopted as the 'current price' of spectrum in the 1800 MHz band" and para 3.91 "the Authority accordingly recommends that the current price of spectrum in the 900 MHz band be fixed at 1.5 times that of the 1800 MHz band" of TRAI Recommendations dated 11 May, 2010 in support of his argument. Whereas Shri R.P. Singh insisted that he did not recommend calculation of loss using this as an indicator, the C&AG contented that what was used for calculation of loss was the figure indicated by the then DG Audit, P&T. However, the first two TRAI recommendations quoted by the C&AG in support of the calculation of loss of spectrum specifically relate to entry fee and not to spectrum.

10.55 Further, it is found that the very paragraph No 3.80 of TRAI Recommendations on 'Spectrum Management and Licensing Framework' dated 11 May, 2010 that was used by the Audit in support of the comparison between 2G and 3G had stated categorically that there was no definite conclusion arrived at by the Regulator on reckoning of 3G auction prize as the

current price of 2G spectrum. TRAI did also point out that “while some hold the view that the value of 1800 MHz band is about 1/3rd of the 2100 MHz band, there is a contrary view that the two are comparable”. Another argument put forward by TRAI was that the supply-demand position is different in case of 2G and 3G. Stating that the Authority could not arrive at a definitive conclusion on the subject at that stage, the recommendation of TRAI was: “The Authority is of the opinion that, pending further deliberations on this issue, the 3G price may be adopted as the price for 2G.” In addition to this, in para 3.44, 3.45 and 3.46 of the same report, the Authority had noted that “In order to maintain a level playing field, it would be necessary to avoid the auction route for the newer operators for whom an auction would raise the cost of providing service *vis-à-vis* the operators who already have more than 6.2MHz of spectrum.” From the foregoing it is obvious that TRAI had not arrived at any final conclusion that 2G and 3G spectrum are comparable. According to the Department of Telecommunications, the Audit had relied on some of the recommendations of TRAI and had not considered the recommendations in full. The Department also drew attention towards Para 2.78 of TRAI Recommendations on ‘Review of licence terms and conditions and capping of number of access providers’ dated 28 August, 2007: “As far as new entrant is concerned, the question arises whether there is any need for change in the pricing methodology for allocation of spectrum in the 800, 900 and 1800 MHz bands. Keeping in view the objective of growth, affordability, penetration of wireless services in semi-urban and rural areas, the Authority is not in favour of changing the spectrum fee regime for a new entrant.” During evidence the representatives of the Association of Unified Telecom Service Providers of India (AUSPI) informed that 2G and 3G cannot be compared by efficiency, revenue or investment. Further according to the Department of Telecommunications, 2G systems with speed ranging from 9.6 kbps to 28.8 kbps are normally of lower cost than 3G systems with higher data rate speed. TRAI had ruled out any change in the pricing methodology for allocation of spectrum in the 800, 900 and 1800 MHz bands in their Recommendations of 28 August, 2007 prior to allocation of 122 licences and spectrum. Surprisingly the TRAI Recommendations were cherry-picked and were not considered in entirety while referring to them by the Audit for trying to establish that 2G and 3G prices are comparable and calculating presumptive loss for spectrum on the basis of revenue realized through 3G auction. One fails to understand how the TRAI Recommendation of 11 May, 2010 quoted by the Audit could be made applicable in retrospect for spectrum allocated in 2008. Additionally, 3G spectrum was auctioned for the first time in the country in early 2010. How could the revenue realized in 2010 for 3G be used for calculating the loss on account of 2G spectrum allocated as far back as in 2008 where the demand-supply position was also very different is something that needs proper justification.

10.56 While calculating the loss, the Audit also does not seem to have taken into consideration the fact the UAS Licence provides for contracted spectrum of 6.2 MHz without separate upfront charges and it is not possible to calculate the loss for the spectrum bundled with the licence. During evidence the C&AG conceded that there was neither any TRAI recommendation nor Cabinet decision to go in for auction of 2G spectrum although there were references regarding the need for revision of licence fee and spectrum charges from the PMO and the Ministry of Finance. However, such suggestions do not by themselves enjoy any mandate unless and until they are transformed into decisions. When the Department of Telecommunications referred TRAI recommendations dated 13 May, 2005 on “Spectrum Related Issues” with particular reference to spectrum pricing to the Ministry of Finance, the Ministry did not recommend auction. The Ministry of Finance communication dated 21 December, 2005 stated: “Auction/Price Discovery and Base Fee methods are not appropriate, the first due to its monopolistic and cost implications and the latter as it implies an administratively determined fee without the basis of price discovery. While revenue share would be the most logical and transparent and also acceptable to the industry, free allocation of spectrum is in the nature of a subsidy, especially as the resource in question is scarce and in great demand.” Above all, as it has been pointed out during evidence, the latest trend of 2G spectrum auction has created an environment where huge loss figures calculated on the basis of auction of spectrum will prove to be unrealistic.

10.57 The third indicator used by the Audit was calculation of loss based on FDI attracted by the new entrants in the telecom market. As per the Foreign Direct Investment policy, companies are permitted FDI up to 49% under automatic route and up to 74% with the approval of Foreign Investment Promotion Board. The C&AG conceded during evidence that DG Audit, P&T had not recommended calculation of loss on the basis of FDI. It was at the instance of the C&AG headquarters that the Audit Unit had attempted a draft. While submitting the draft, the Audit Unit under DG Audit, P&T had recorded in the file: "As directed by the Principal Director (Report Central) a para on loss of potential revenue on issue of licences taking the price the FDI attracted by UAS Licences is placed opposite for perusal. In this connection it is submitted that we are not on strong grounds in the arguments made. However, since Headquarters has directed for a draft we may forward it along with our comments." While forwarding the draft para to the Principal Director (RC), the Director (Report) had pointed out in the forwarding letter that it might not be appropriate to attribute the foreign investments completely to the UAS Licences because one of the major factors an investor would consider before venturing into any market would be its size. Indian telecom sector with less than 30% tele-density in 2008 obviously had huge potential. The letter had clearly concluded that it would be difficult to establish a tenable link between the value of UAS Licences and the net worth of foreign investments the licensees attracted. According to the Department of Telecommunications, Unitech and Swan Telecom had made strategic partnership for investment in the company as per the Companies Act and had entered into agreement with foreign companies, Telenor Asia and Etisalat Mauritius respectively for infusion of equity capital into the company by issuing fresh equity. The Department held the view that the investment brought in by strategic foreign partners were to be utilised for rolling out the services in the licenced service areas and it would enhance their capital base keeping the absolute share holding of the promoters intact. According to the licensee companies, they have issued additional equity for bringing in foreign investment and as they have not transferred promoters' equity shares, promoters' equity has not been diluted. The view of the Department of Telecommunications is that it is a normal practice in the corporate world to bring investment into the company for rolling out or expansion of business. Government is said to have been encouraging FDI from the beginning and on earlier occasions also FDI had been infused in licensee companies as per the FDI policy. The CBI has confirmed that investigations did not reveal evidence regarding criminality in the aforementioned infusion of additional equity by foreign companies into the two companies or contravention of the FDI investment policy applicable in the telecom sector. In view of preceding facts, loss calculation and determination of value of licences and spectrum on the basis of legitimate infusion of FDI by means of fresh equity by the telecom companies is untenable.

10.58 Trying to assess the relevance of the word 'presumptive' loss in the context of the current Audit Report, a reference was made to the C&AG Office seeking clarification on the guidelines available for calculation of presumptive loss. The reply by the C&AG Office made a reference to para 7.3.25(a) of the C&AG Manual of Standing Orders (Audit) which provides that, "substantial loss of public money may be mentioned individually in cases where there is transgression of Statutory provision, rules or orders". In addition, the Income Tax Act has certain provisions for levy of tax on presumptive basis. A reference was also made to calculation of potential loss of revenue. According to the Ministry of Finance (Department of Revenue) the word 'presumptive' finds mention in the Income Tax Act and the Direct Taxes Code Bill, 2010 wherein it has been provided for determination of income of certain specific business where their income is presumed to be a certain percentage of their total receipts. Presumptive taxation involves lump sum levies on certain small-scale business activities to whom Section 44 AB is not applicable. Ministry of Law & Justice defined the word 'presumptive' as resting on presumption and clarified that presumptive loss is not conclusive or may not be the actual loss. From the foregoing, the very concept of calculation of 'presumptive' loss in the context of allocation of licences and spectrum in a C&AG report is misleading.

10.59 While presenting the first calculation of loss, the Audit had clarified that the offer of S. Tel is only an indicator of the market perception of the value of 2G spectrum which could have accrued to the Government if Government had resorted to a bidding/auction process for its allocation in 2008. With regard to the second calculation on value based on prices discovered for 3G spectrum also, the Audit had clarified that those were only indicators available which gave hints towards the loss Government could have suffered. Justifying the third indicator relating to sale of equity by the licensee firms at higher value, the Audit had stated that those were attempts to highlight that the price discovery of spectrum through a market mechanism would have fetched a much higher value and thus increased receipts for Government. What is astonishing is that after presenting the three propositions as indicators, the Audit suddenly went ahead terming the figures as 'loss to the Government on account of grant of new UAS licences and 2G spectrum during the period 2007-2010'. How could something indicative, notional or suggestive be treated as loss to the exchequer seem unconvincing. After presenting a wide range of loss between Rs. 67,364 to 1,76,645 crores, the concluding para of the Audit report stated: "The fact that there has been loss to the national exchequer in the allocation of 2G spectrum cannot be denied. However, the amount of loss could be debated". This was reiterated by the C&AG during evidence: "It is totally open to dispute because when we say presumptive, we are not at any final figure. We have given a huge range". However, the former DG Audit, P&T gave a totally different view during evidence: "In Performance Audit we do not write anything until or unless that has supporting evidence". One could hardly find precedents where the loss figures were calculated by the C&AG in such a varying range as in the case of this Audit Report. The audit reports are not intended for the purpose of generating debate for determining actual loss to the exchequer. Moreover, the extant policy of the Government for the telecom sector enjoys precedence and needed due reckoning by the supreme audit institution of the nation. In the backdrop of the disrepute caused to the nation on account of projection of such astronomical figures in the Audit Report pitching the country among the most corrupt nations in the world, the Committee in hindsight could only wish that the figures projected in the report could have been more realistic deriving out of proven facts.

10.60 The Committee have been informed by TRAI that the CBI had asked the Authority to get the price of CMTS/Basic/UAS licences which comes bundled with spectrum determined by the experts who had given the 2010 value of 1800 band spectrum on technical and commercial parameters for the years from 2001 to 2008 on yearly basis. On their part, the experts were of the view that it is not possible to predict with certainty the precise value of spectrum that would have emerged in an auction. They also felt that the risk of error in the estimates would increase since the exercise would be carried out retrospectively and with meager data. Hence it emerges to be amply clear that an exercise for calculation of value of spectrum in retrospect by any agency could be error prone with misleading outcome. In its response to the CBI in this regard, TRAI referred to Para No 3.106 of its Recommendations dated 11 May, 2010: "It must be pointed out that the grant of licences at Rs. 1659 crore (pan-India) was a matter of policy... While revenue generation is no doubt significant, NTP-1999 underlines the need for providing telecom services at affordable rates. That the low telecom tariffs in this country have fuelled the rapid growth of telecom services in the country, and have helped different sections of society to access these services, is widely acknowledged". TRAI's communication further pointed out that NTP-1999 did not lay down auction method as the procedure for the entry of operators from the fourth operator onwards. TRAI reiterated in the communication to the CBI that the Authority repeatedly held the view that telecom services and spectrum should not be treated as a source of revenue for the Government. The Authority pointed out that it is against this background that TRAI did not recommend, including in August 2007, auction methodology, nor did it recommend any increase in the entry fee for new players, by way of indexation or otherwise. When the Regulator had taken a consistent stand against auction of spectrum and increase in the entry fee for new players by way of indexation or otherwise, it is astonishing how the Audit could

consider calculating loss, be it actual or presumptive, on account of allocation of licences and spectrum. The Committee are, therefore, of the considered view that the very move for calculation of any loss on account of allocation of licences and spectrum is ill-conceived.

10.61 It is imperative that the calculation of loss to the exchequer on account of allocation of licences and spectrum has to be viewed in the context of the overall policies laid down for the telecom sector from time to time. Highlighting the key objective, NTP-1999 stated: "Availability of affordable and effective communications for the citizens is at the core of the vision and goal of the telecom policy". The Tenth Five Year Plan (2002-07) laid down that "The telecom sector needs to be treated as an infrastructure sector for the next decade or so in order to achieve the targets of tele-density in line with the objectives laid out in the NTP-1999". The Tenth Plan document further clarified: "Government's broad policy of taxes and regulation for the telecom sector has to be promotional in nature with a view to ensuring optimum growth in the coming years. Revenue generation should not be a major determinant of the macro policy governing the sector". One of the guiding principles of spectrum policy in the document says: "Spectrum policy needs to be promotional in nature; revenue considerations playing a secondary role". Nonetheless, it had also prescribed: "Spectrum pricing need to be based on relative demand and supply over space and time in a dynamic manner. Opportunity cost to reflect the relative scarcity of the resource in a given situation". The Eleventh Five Year Plan document released on 25 June, 2008 continued to treat the telecom sector as an infrastructure sector. The Committee note that the consistent stand taken by TRAI for non-revision of the licence fee and not favouring auction of spectrum is in conformity with the policy prescriptions laid down in NTP-1999 and the Tenth Five Year Plan document that treats telecom sector as an infrastructure sector for a decade commencing from 2002.

10.62 The question that emerges is: could the C&AG audit something that falls within the framework of policy and could presumptive loss be calculated on the allocation of licences and spectrum, meant to be promotional in nature and not for revenue generation? When the Committee sought the views of Shri D. Subbarao, former Finance Secretary and presently Governor of the Reserve Bank of India, on this issue, he replied during evidence: "If in the view of the Government you want to give spectrum and licences and sacrifice some revenue in the expectation that this would increase tele-density and maximize welfare, then I believe, that you cannot attribute financial loss to that. So, to say that there was a loss, to calculate loss you have to have reference points. So, it is not clear where the balance lay between welfare maximization and revenue maximization". On the same question, Shri K.M. Chandrasekhar, former Cabinet Secretary, opined: "The issue to be considered here is whether there has been 'atonement of revenue'. My own interpretation would be that the 'revenue' in this case relates to revenue that accrues by way of implementation of existing policies. The existing policy prescribed a particular entry fee for spectrum. If the Department of Telecommunications had allocated spectrum below the prescribed entry fee, there would have been 'abandonment of revenue'. The concept cannot, in my view be extended to revenue that may have been obtained had the policy been different". The Opinion of the Supreme Court of India dated 27 September, 2012 in response to the reference made by the President of India under clause Article 143(1) of the Constitution, *inter alia* stated: "Revenue maximization is not the only way in which common good can be subserved. Where revenue maximization is the object of a policy, being considered *qua* that resource at that point of time to be best way to subserve the common good, auction would be one of the preferred methods, though not the only method. Where revenue maximization is not the object of a policy of distribution, the question of auction would not arise. Revenue consideration may assume secondary consideration to developmental considerations". The opinion given by then Attorney General of India on 16 June, 1999 in the context of the Migration Package holds equally good in the present context: "If there is some loss of revenue, it is well settled that the public revenue is not synonymous with public interest". Going by these standards

and policy prescriptions of the time, the Committee are convinced that Government's broad policy on taxes and regulation for the telecom sector during the period under report was expected to be promotional in nature with revenue generation being accorded a low priority with a view to ensuring optimum growth in the sector.

10.63 On the question of auditing Government policy, the C&AG clarified during evidence: "We are very clear. We do not question the Government (policy)." However, while communicating the decision regarding conduct of audit of grant of licences and spectrum, the then DG Audit, P&T in his letter dated 18 November, 2009 to the Department of Telecommunications had stated: "The aspects of policy, decisions taken, selection and rejection criteria of applicants for licences, process of issue of licences to the selected operators, policy and procedure adopted for allocation of 2G spectrum, logic and reasons behind the policies in these matters will also be included in the examination". The matter was referred by the Department of Telecommunications to the Ministry of Law and Justice. The view of the Ministry of Law and Justice was: "CAG Act, 1971 nowhere provides that he has any duty or power to question the wisdom of the policy/law makers as policy decision may involve trial and error theory. CAG, CVC and other watchdog no doubt play a very significant role in any democracy but they being constitutional/statutory functionaries cannot exceed the role assigned to them under the Constitution/law. Even the Courts refrain to question wisdom of Government in policy matters unless the policy decision is patently arbitrary, discriminatory or *mala fide*". The opinion of the Ministry of Law and Justice was communicated to the C&AG Office by the Secretary, Department of Telecommunications on 7 September, 2010. It is surprising that despite the clarification by the Ministry of Law and Justice, the audit of the policy and calculation of loss thereon was carried out unhindered. In this context, the Opinion of the Supreme Court of India dated 27 September, 2012 in response to the reference made by the President of India conclusively hit the nail on the head: "Alienation of natural resources is a policy decision, and the means adopted for the same are thus, Executive prerogatives." In a democratic framework every organ of the Government is expected to exercise maximum caution and restraint not to trespass the boundaries already drawn up. The Committee would, therefore, like to uphold the prerogative of the Government in a Welfare State to formulate policies which should under no circumstance be subjected to audit or calculation of loss.

10.64 While presenting the chronology of facts leading to emergence of the telecom sector in India as a success story, the former Chairman of TRAI (2003-06), Shri Pradip Baijal, referred to the crucial role played by the policy prescriptions in this regard. According to him eight years after introduction of mobiles, the tele-density in the country was 1%, much lower than very backward countries. Tariffs and handset costs were unaffordable except for very rich. Auctions for interiors had failed and telecom companies were incurring huge losses and not investing. The sector had to be brought out of courts. It was at a time when China with a similar population was 22 times of India's network and was growing at a rate 35 times ours, that TRAI made the recommendation on 27 October, 2003: "Formulation of telecom regulatory environment and strategy has to be based on the single priority of the moment, viz. increasing the availability of phone connections at affordable costs and tariffs and ensuring fast roll out of services. Growth of tele-density revolves around access networks and need to make available low cost access". According to Shri Baijal, today the country has emerged as the largest mobile market in the world. In terms of telecom tariffs he pointed out that in the 1990s it was Rs. 32 per minutes (Rs. 16 charged at each end), whereas it is the lowest in the world today with less than Re. 1 per minute. As per the data furnished by the Department of Telecommunications the average outgo per outgoing minute for GSM full mobility service was Rs. 0.76 in March, 2009 as against Rs. 16.93 in March, 1999. The tele-density which was a paltry 2.33% in 1999 rose to an impressive 78.66% in 2011-12. It is a matter of grave concern that while calculating the presumptive loss on account of matters which fell within the domain of the policy prescription of the Government, the Audit never took cognizance of the benefits which accrued to the people of the nation at

the grass root level as a result of implementation of the policy. By any standards, the benefits far outweigh any possible revenue forgone by the Government in the process of sustained policy intervention with the broad objective of increasing tele-density and maximizing welfare of the people.

The role of Telecom Regulatory Authority of India (TRAI)

10.65 The Committee note that Telecom Regulatory Authority of India (TRAI), the nation's first Independent Regulator, came into being as a facilitator to address the complexities of opening up the Telecom Sector to private operators in pursuance of the New Economic Policy of 1991. Hitherto the need for an Independent Regulator never arose as the Government was the sole operator apart from being the policy maker. However, when private operators entered as service providers the need for a Regulator came up to ensure maintenance of level playing field and fair business practices, to protect consumer interests, etc. Though initially the Government did not envisage TRAI as a statutory body, based on the recommendations of the Parliamentary Standing Committee on Information Technology (10th Lok Sabha), TRAI was given statutory status. The TRAI Act, 1997 came into force w.e.f. 25 January, 1997. In its initial form, TRAI had *quasi judicial* adjudicatory powers. However, the Act was amended through TRAI (Amendment) Act, 2000 to redress certain difficulties that had arisen in the implementation of the Act and the TDSAT was established and endowed with adjudicatory powers severed from TRAI. The Amendment was based on the recommendation of the Group on Telecom and Information Technology (GoT-IT) which had gone into the matter in depth.

10.66 It is evident to the Committee that TRAI has been prolific in providing recommendations on different aspects of the Telecom Sector, both on getting reference from the Government and by taking *suo motu* cognizance of emerging issues. The path breaking recommendations of TRAI on 27 October, 2003 on Unified Licensing Regime paved way for the existing telecom licensing mechanism in India. The procedure followed by TRAI include taking all stakeholders on board before making its recommendations on important matters by floating consultation papers, holding open house discussions, etc. The Committee feel that such an inclusive approach would lend a lot of weightage to the recommendations of the Authority. The observations of TDSAT and that of the Supreme Court of India regarding the role of TRAI and the weightage that needs to be accorded to its recommendations are indicators to this fact.

10.67 On a close look at the provisions contained in Section 11(i) of the amended TRAI Act, the Committee find that these provisos specify time restrictions mostly on TRAI for executing its tasks pursuant to references received from the Government. However, once TRAI forwards its recommendations, the Government is at liberty to accept, reject or keep it pending without citing any tangible reason. Moreover, there have been instances in the past where the recommendations of TRAI were cold shouldered by the Government. Two specific instances are the recommendations on 'Spectrum Related Issues' dated 13 May, 2005 and the recommendations on 'Unified Licensing Regime' dated 13 January, 2005. Whereas in case of the former the decision of the Government on the recommendations was not communicated to TRAI at all, in the latter case, the entire recommendations were not accepted by the Government without communicating the reasons for the same to the Authority. Considering the regulatory powers envisaged in the TRAI Act, the expertise available at the disposal of the Authority and the broad based consultative process it undertakes prior to formulating its recommendations, the Committee are of the firm view that the recommendations being made by the Regulator need to be accorded due weightage by the Government. In the opinion of the Committee, an Independent Regulator cannot be effective if its recommendations are to be left entirely at the mercy of the Government. Therefore, the Committee are of the unequivocal view that Government should decisively respond to the recommendations of TRAI within a specific time frame as it is currently mandatory for TRAI

to respond to a reference by the Government within 60 days. Such a move will lend more credibility to the role of the Regulator which is going to be increasingly crucial in the times ahead. The Committee, therefore, recommend that the TRAI Act be suitably amended to incorporate provisions to ensure that a harmonious balance is maintained between the Regulator and the Licensor in the matter of treating the recommendations from TRAI.

Spectrum — A precious national asset

10.68 Radio Frequency Spectrum, a basic requirement for providing wireless services, is a precious national asset which is shared by various Government and private users. Utilization of Radio Frequency Spectrum is governed by the International Telecommunication Union (ITU). Government formulated the National Frequency Allocation Plan (NFAP) in 1981 based on the International Radio Regulations for optimal use of the scarce resource. It was revised in 2008 and became effective from 1 April, 2009. Mobile services which use GSM technology in the country work in the frequency bands of 900 and 1800 MHz and the CDMA technology works in 800 MHz band. The Wireless Planning & Coordination (WPC) Wing in the Department of Telecommunications, which was formed in 1952, deals with the policy of spectrum management, wireless licensing and frequency assignment. Apart from this, WPC wing is required to renew licences, reallocate surrendered frequencies and act upon infringement reports received from the monitoring stations. The Committee note that despite having well thought of and clear cut mandate, the WPC depends on the data maintained by COAI and AUSPI on their website for several information including that of subscriber base of operators which is a vital component forming the basis for allocation of additional spectrum. This has seriously affected the effectiveness of WPC Wing and speaks volumes about its capability for monitoring and managing the scarce resource. The WPC Wing as well as its field unit known as the Wireless Monitoring Organisation, that provides essential monitoring, inspection and other technical and licensing conditions as also fulfilling the international obligations, is headed by the Wireless Adviser to the Government of India. In its recommendations on 'Spectrum Management and Licensing Framework' dated 11 May, 2010, TRAI had recommended that WPC Wing be further strengthened. The recommendations made by the Regulator included (i) upgrading of the post of Wireless Advisor, (ii) establishment of unmanned remote monitoring units in central business districts and along coastal areas, (iii) enhanced participation of Wireless Monitoring Organisation (WMO)/WPC officials in ITU/APT, (iv) augmentation of manpower in regional offices of Deputy Wireless Advisor, etc. These recommendations were not pursued seriously by the Government. Considering the vital role the WPC Wing plays in the efficient management and distribution of Radio Frequency Spectrum, the Committee desire that these recommendations aimed towards strengthening the organization be given serious consideration by the Government and steps taken to reorganize and strengthen the WPC Wing. The WPC Wing should develop and maintain its own computerized record relating to vital data like subscriber base of service providers, availability of spectrum, data received from its monitoring stations, etc.

10.69 The aim of NTP-1994 was to provide telecom services at affordable and reasonable price. NTP-1999 further called for efficient, economic, rational and optimal use of spectrum. It was in this background that the telecom policy relating to spectrum pricing evolved since the year 1999. The NTP-1999 stressed the need to have a transparent process of allocation of frequency spectrum which is effective and efficient and also for review of spectrum allocations in a planned manner so that required frequency bands are available to the service providers. Keeping in view the growth prospective of the telecom sector, the Tenth Five Year Plan (2002-07) emphasized the need to treat the telecom as an infrastructure sector till the next decade or so until the required tele-density is achieved and the necessary support network is created. The Tenth Five Year Plan document also emphasized the need for the policy governing spectrum allocation and licensing to be such that the scarce resource was used optimally and did not

become a constraint for growth. It was further emphasized that the spectrum pricing need to be based on relative demand and supply over space and time in a dynamic manner and opportunity cost to reflect the relative scarcity of the resource in a given situation.

Since the beginning, licences had a spectrum commitment of 4.5+4.5 MHz and 4.4+4.4 MHz in metros and circles respectively. However, while issuing licences to the fourth cellular operator in 2001, the licensees were allotted 6.2+6.2 MHz spectrum straightaway. There was no upfront charge for the allocation of spectrum to the licensees. The WPC Wing issued an order requiring licensees to pay spectrum charges with effect from 1 August, 1999 (the cut-off date of change over to revenue share regime of NTP-1999) on revenue share basis @2% of AGR annually. The said revenue share covered royalty payment for the use of cellular spectrum up to 4.4+4.4 MHz and any additional bandwidth, if allotted subject to availability and justification, attracted additional royalty and licence fee as revenue share. The spectrum charges have two components—one time spectrum charges which are part of one time entry fee and annual spectrum charges in the form of a percentage of AGR. The one-time spectrum charge and entry fee for licence have not been separated and the entry fee included onetime spectrum charge. On the basis of the proposal submitted by the WPC Wing, the Telecom Commission in its meeting held on 19 March, 2004 decided that for additional spectrum of 2.5 MHz or part thereof beyond 10 MHz, if assigned to a mobile service operator in metro and other telecom circles, an additional charge of 1% of AGR would be levied, thus making total spectrum charge to be paid by such operator as 5% of AGR from 1 June, 2004. For additional spectrum of 2.5 MHz or part thereof beyond 12.5 MHz, an additional charge of 1% of AGR would be levied, thus making total spectrum charges as 6% of AGR. TRAI in its report dated 13 May, 2005 recommended that after implementation of Unified Licence Regime as recommended by the Authority and subject to approval by the Government, the onetime spectrum charge would be equal to UASL entry fee in that service area minus the component of registration charge based on the entry fee paid by new BSO (entered in/after 2001), specified by TRAI recommendations on Unified Licensing Regime dated 13 January, 2005 (Para 4.3.3). The Department of Telecommunications sought the comments of the Ministry of Finance (Department of Economic Affairs) on the above recommendation. In their response dated 21 December, 2005, the Ministry of Finance did not favour auction, price discovery and base fee methods. They felt that the hybrid option of a base fee combined with revenue share appeared to be the most appropriate. Although subsequently a suggestion came from the Department of Economic Affairs to go in for auction of initial spectrum of 4.4 MHz in February, 2008, the Department of Telecommunications was not in favour of the proposal on the ground that it would disturb the level playing field. An understanding was reached between the Ministers of Finance and Communications & Information Technology that spectrum beyond the start up levels only should be charged. The Committee note that spectrum allocation and pricing has been a topic that has generated considerable interest and debate. The strategy that was considered good at the nascent stage might not hold good today. Spectrum pricing would have to be reviewed and determined periodically in the context of growth in tele-density, relative demand and supply, level playing field for the service providers, etc. in a dynamic manner. The Committee desire that the question of allocation and pricing of spectrum be referred to TRAI for a comprehensive review in the light of the latest trends in the telecom sector including the priority and growth of the telecom sector, demand and availability of spectrum, the need to ensure level playing field, etc. so that an economically viable as well as commonly acceptable pattern of spectrum pricing could be evolved.

10.70 Another area relating to spectrum that requires more clarity and transparency is the criteria that has been pursued from time to time for allocation of additional spectrum to the existing service providers. The Technical Committee that was appointed in 2001 to look into the request of the COAI for allocation of additional spectrum particularly in Delhi and Mumbai service areas beyond 6.2+6.2 MHz was of the opinion that 6.2+6.2 MHz spectrum was sufficient

for a subscriber base of about 9 lakhs per operator in the service areas of high penetration like Delhi and Mumbai with the use of tighter use pattern and advanced radio frequency features like synthesized frequency hopping and antenna diversity, etc. The spectrum could support much higher subscriber base in Telecom Circles. The Committee felt that allocated 6.2+6.2 MHz in Delhi and Mumbai metros would be sufficient for another 24 to 30 months, if the networks were planned optimally. Additional frequency spectrum of 2 MHz might be allocated after one year to each of the Delhi and Mumbai Service Area Operators either in 900 MHz or 1800 MHz band based on requirement. Although the Secretary, Department of Telecommunications had on 10 January, 2002 recorded a note that there was no immediate need for allocation of additional spectrum to the service providers, the stand was reversed as early as on 31 January, 2002 when, with the approval of the Minister of Communications and Information Technology, a decision was taken for release of additional spectrum to the extent of 1.8 MHz (paired) beyond 6.2 MHz up to 10 MHz in 1800 band on case to case coordination basis to the operators by charging additional 1% revenue share after customer base of 4 to 5 lakhs was reached and instant spectrum allocations were made thereafter to the operators. According to the recommendations of Lalwani Committee, which were approved by the Minister of Communications and Information Technology on 18 August, 2003, allocation of spectrum based on subscriber linked criteria was to be adopted in view of the severe constraint on availability of spectrum in the country. As recommended by the Committee additional spectrum beyond 6.2+6.2 MHz was to be given once the number of subscribers reached 5 lakhs in a service area; beyond 8+8 MHz on crossing 10 lakhs and beyond 10+10 MHz on reaching a subscriber base of 15 lakhs. It also recommended earmarking of additional spectrum beyond 8+8 MHz (upto 10+10 MHz) in 1800 MHz band only. The service providers were to be allowed to apply for additional spectrum once they reached 80% of the subscriber base possible with the already allocated spectrum. According to TRAI recommendation dated 27 October, 2003, the Authority was not in favour of high spectrum pricing, since such a regime would make the services more expensive and the desired growth would not take place in telecommunications (Para 7.33). Based on the recommendations of the Group of Ministers on Telecom Matters which went into the TRAI recommendation, the Cabinet decided on 31 October, 2003 that allotment of additional spectrum should be transparent, fair and equitable avoiding monopolistic situation regarding spectrum allotment usage. The Cabinet also desired that long term (5 to 10 years) spectrum requirement along with time frame be worked out by the Department of Telecommunications. The Department continued to allocate additional spectrum based on the subscriber base criteria which were revised on 29 March, 2006, 1 December, 2006 and 17 January, 2008. Additional spectrum was allocated to the service providers by the Department of Telecommunications on a continuous basis from 2001 onwards. However, the view of the officials of WPC Wing was that there were no clear guidelines regarding the procedures to be followed for allocation of spectrum and in the absence of guidelines and orders, certain practices were being followed. The Subodh Kumar Committee on allocation and pricing of 2G spectrum appointed by the Department of Telecommunications in 2008 recommended moving away from administratively determined criteria for allocation of spectrum to a market-driven approach. According to the said Committee the need of the hour was to permit the market to determine the optimum number of operators by facilitating spectrum transfer/merger/sharing. The Committee find that there has not been any fixed policy as far as allocation of additional spectrum is concerned. This is mainly due to frequent changes in the subscriber base criteria for allocation of additional spectrum and the absence of a comprehensive policy on spectrum allocation. Spectrum being a scarce resource, utmost care would have to be taken to ensure that there is no hoarding of spectrum and the bandwidth allocated is used optimally by the service providers. Therefore, allocation of additional spectrum is a matter that needs review and stringent guidelines will have to be formulated and enforced to ensure maximum utilization of available spectrum and to discourage the tendency for hoarding of excess spectrum.

10.71 In the Mid-Term Appraisal of the Tenth Five Year Plan, the Planning Commission had observed that spectrum is the scarcest of resources. It recommended drawing up and implementation of an action plan in a time bound manner for getting more spectrum vacated from Defense and other agencies. Taking into consideration the views expressed by the Ministry of Finance and the Planning Commission on spectrum related issues, a decision was taken on 20 November, 2005 at the instance of the Prime Minister's Office to constitute a Group of Ministers (GoM) to look into the issues relating to spectrum. In the process of consultation with the Department of Telecommunications on the terms of reference of the GoM, the Minister of Communications repeatedly held the view that the GoM should mainly look into issues relating to vacation of spectrum and raising resources to enable the Defense Services/Para-Military Forces to vacate spectrum and spectrum allocation policy and related issues should be left under the domain of the Ministry of Communications and Information Technology or TRAI as per Allocation of Business Rules. The Cabinet Secretariat notification dated 23 February, 2006 *inter alia* included spectrum pricing policy. The Minister of Communications & Information Technology wrote to the Prime Minister on 28 February, 2006 and again on 16 November, 2006 insisting that the Terms of Reference be modified as the one notified had much wider terms of reference, some of which, he felt, impinged upon the work normally to be carried out by his Ministry. The Minister enclosed revised draft Terms of Reference for the GoM without spectrum pricing. The revised Terms of Reference as suggested by the Minister were notified by the Cabinet Secretariat on 7 December, 2006. Subsequently on 28 March, 2007, the Finance Secretary wrote a letter to the Secretary, Department of Telecommunications stating that the spectrum pricing is of immense importance for further growth of telecom in the country and should be included in the Terms of Reference of the GoM. The communication pointed out: "A sound policy of spectrum allocation and pricing will not only result in optimum utilization of spectrum but would also have revenue implication." In his reply dated 2 April, 2007 to the Finance Secretary, the Secretary, Department of Telecommunications maintained the earlier stand taken by the Minister in this regard. Thereafter, the Finance Secretary addressed a communication to the Cabinet Secretary on 19 April, 2007 apprising him of the developments and reiterating that spectrum pricing and allocation have far reaching consequences for the economy and needed to be debated. The letter also pointed out that the contention of the Department of Telecommunications that these issues are within its normal work is not entirely correct. The Cabinet Secretariat on 17 May, 2007 asked the two Ministries to discuss and resolve the matter at their level after which the Cabinet Secretariat could be advised of the decision taken in the matter. The Secretary, Department of Economic Affairs wrote to the Secretary, Department of Telecommunications on 6 June, 2007 stating that the matter was discussed at the level of the Finance Minister and that the Department of Economic Affairs was of the view that for optimum utilization of spectrum, a sound policy on spectrum pricing was necessary. The communication reiterated the need for inclusion of spectrum pricing in the Terms of Reference of the GoM. In response, the Secretary, Department of Telecommunications replied to the Secretary, Department of Economic Affairs on 15 June, 2007 stating that the one major bottle-neck in sustained growth of telecom sector was availability of and not allocation of spectrum. The GoM, he felt, should therefore focus its attention on the vacation of spectrum. It was also stated that the matter was discussed in a meeting with the Minister of Communications and Information Technology and it was felt that the Terms of Reference might remain as they were notified by the Cabinet Secretariat on 7 December, 2006. Thereafter, the matter was neither pursued by the Ministry of Finance nor the Cabinet Secretariat. When enquired whether the Department of Telecommunications violated the Cabinet decision of 2003 by keeping the spectrum pricing out of the Terms of Reference of the GoM, Dr D. Subbarao, former Finance Secretary stated: "I think that you cannot really infer that this deletion was inconsistent with the Cabinet decision because...regardless of whether this was there in the Terms of Reference of the Group of Ministers or not, there was an obligation, responsibility and authority for the Ministry of Finance to discuss financial dimensions with the Department of Telecom which we did." In view of the fact that spectrum pricing is an issue that needs specific

attention, the Committee trust that the recommendations being made in other paragraphs of this report relating to spectrum pricing would receive the attention of the Government with the promptitude it deserves.

10.72 In the recommendations of TRAI dated 13 May, 2005, made against the backdrop of reaching a target of 200 million mobile phones by the year 2007, the Regulator insisted on reasonable spectrum price so as to make available telecom services at affordable price and ensure level playing field among service providers using various technologies (Para 1.9.1). TRAI observed in the report: "To achieve high growth of mobile services with the penetration in semi urban and rural areas, it is necessary that the services are available at an affordable price. To achieve this, the spectrum price, which is a raw material for wireless services, has to be kept within reasonable limits" (Para 2.1.4). In the recommendations dated 28 August, 2007, TRAI keeping in view the objective of growth, affordability, penetration of wireless services in semi-urban and rural areas, was not in favour of changing the spectrum fee regime for a new entrant (Para 2.78). The Authority felt that any differential treatment to a new entrant *vis-à-vis* incumbents in the wireless sector would go against the principle of level playing field. This was specific and restricted to 2G bands only, i.e. 800, 900 and 1800 MHz. According to the Regulator this approach assumed more significance particularly in the context where subscriber acquisition cost for a new entrant was likely to be much higher than for the incumbent wireless operators. Subodh Kumar Committee on allocation and pricing of 2G spectrum appointed by the Department of Telecommunications in 2008 recommended that no additional spectrum should be assigned in future based on Subscriber Linked Criterion and all assignments of 2G spectrum should be through auction. The Committee note that although there were a number of recommendations on spectrum pricing made by TRAI or committees set up by Government as well as views expressed by the Finance Ministry and the PMO, there was no policy decision taken by the Government in favour of auctioning of 2G spectrum. Most of the time, TRAI, the Department of Telecommunications, the Ministry of Finance and the Planning Commission favoured maintaining of reasonable spectrum price so as to make available telecom services at affordable price and ensure level playing field among service providers using various technologies. However, policy formulations on matters like spectrum pricing which has significant revenue implications, would need to take into account the latest trends in the telecom sector. The Committee, therefore, are of the view that the issue of pricing of spectrum requires an in depth review by the Regulator and a policy decision in the Government at the highest level after taking into account the growth registered by the telecom sector in the country, the Supreme Court verdict relating to 2G auction, the Opinion given by the Supreme Court on the Special Reference made by the President of India, the experience gained in the light of recent 2G and 3G auctions, etc. In order to put an end to a number of misconceptions and arguments in favour and against auction of spectrum, the process of consultation on spectrum pricing should be accorded top priority and a final decision taken in the matter in consultation with the departments/agencies concerned.

10.73 In the Mid-Term Appraisal of the Tenth Five Year Plan, the Planning Commission had observed that spectrum availability needed to be adequately increased by more efficient utilization by the existing operators and services and by release of spare spectrum through modernization and upgradation of equipment. TRAI recommendations dated 13 May, 2005 also called for effective utilization of allocated spectrum (Para 4.4.10). In the recommendations on 'Review of licence terms and conditions and capping on number of access providers' dated 28 August, 2007, TRAI suggested that Government should examine delinking of spectrum from the licence and specify appropriate licence fee for UAS licensees who do not wish to utilize the spectrum (Para 2.55). The Regulator suggested enhanced subscriber base criteria. For example for GSM, subscriber base criteria recommended for 6.2 MHz (paired) was 0.5 million for metro cities and 0.8 million for A category service areas and for 10 MHz (paired) 2 million subscribers

in metro cities and 5 million subscribers in A category service areas. For CDMA, subscriber base criteria recommended for 3.75 MHz (paired) was 0.5 million subscribers for metro cities and 0.8 million subscribers for A category service areas and for 6.25 MHz (paired) 3 million subscribers for metro cities and 8 million subscribers for A category service areas. Whereas internationally GSM operators are allocated spectrum between 15 to 30 MHz, in India it is mostly in the range of 10 MHz. Nevertheless, there are service providers who possess excess bandwidth than what is required. On the other hand, there are applications for additional spectrum being received from the service providers on a continuous basis in the Department of Telecommunications. As on 1 October, 2007, there were also as many as 343 applications for new licences pending with the Department of Telecommunications. Thus, the demand for spectrum is on the rise. According to the Cabinet decision of 31 October, 2003, the spectrum pricing formula was to include incentive for efficient use of spectrum as well as disincentive for sub-optimal usages. Subodh Kumar Committee on allocation and pricing of 2G spectrum appointed by the Department of Telecommunications in 2008 held the view that any inefficiency in the use of spectrum would be penalized by market forces and does not need to be administratively monitored. Spectrum has been allocated to various service providers up to 10 MHz and in some cases beyond that. However, neither the Licensor nor the Regulator has ever carried out any assessment regarding optimal utilization of assigned bandwidth. The Committee find that despite its importance, the issue of allocation of spectrum has not been managed with the seriousness it deserves, particularly, keeping in view its scarcity value. This has also resulted in under utilization of spectrum and thereby its hoarding by the licensees.

10.74 The Committee further find that there is no mechanism either with the Licensor or the Regulator to ensure optimal utilization of the spectrum by the service providers. Such a situation speaks volumes about the unprofessional approach of the licensor towards managing the valuable national asset. The Committee are of the firm opinion that a good policy should focus on the optimal use of spectrum which is a scarce resource and should leave no scope that could lead to wastage or sub-optimal use of spectrum. TRAI in its report dated 11 May, 2010 on 'Spectrum Management and Licensing Framework' had dealt with spectrum audit with a view to ensure that the spectrum allocated to the service providers is utilized optimally and that the service providers deploy advanced/latest spectrum efficient techniques (Para 1.94). TRAI pointed out that many stakeholders had favoured spectrum audit to be conducted to assess the actual spectrum need and to know whether the spectrum being held was as per need and was being utilized efficiently. The Authority felt that there should be a provision of penalty for hoarding of excess spectrum and also for taking back excess spectrum, if found. There was yet another view that if spectrum is allocated on market based mechanism, it need not be audited as the market mechanism will ensure its efficient and optimal utilization. TRAI also suggested that the service providers make use of the various spectrum efficient techniques available so that they are able to support more traffic per MHz of spectrum, serve more number of customers and remain competitive in the market. Notably TRAI opined that "achieving optimal levels of spectral efficiency is the hallmark of any credible spectrum policy" and stressed that it is important on the part of the service providers to utilize the spectrum made available to them in the most efficient manner. Keeping in view the need to monitor the utilization of spectrum by the service providers on a regular basis, TRAI recommended spectrum audit. In its Report dated 11 May, 2010 TRAI concluded: "The Authority would undertake regular spectrum audit through appropriate means. The details of the audit procedure and frequency of the exercise would be finalized through a separate consultation process" (Para 1.98). With the emergence of new technologies and with astounding growth of telecommunication services, spectrum management process has become extremely complex and intricate. In view of this, the scarce resource should be used rationally, efficiently and economically so that equitable access is available for all spectrum users of different radio communication services. It is necessary that all the spectrum users, whether Government or private, work in the spirit of mutual understanding and cooperation and

utilize the resource optimally with self-discipline. The Committee suggest that with a view to ensuring optimal utilization of assigned bandwidth, TRAI, as regulator, should undertake spectrum audit for which details should be finalized at the earliest. The guidelines for spectrum audit should contain a provision for penalty for hoarding of excess spectrum and also for taking back excess spectrum, if found. The Committee also recommend that quantification of available spectrum should be made by the WPC Unit from time to time and notified on the official website for the information of service providers and public at large with a view to ensuring greater transparency.

NEW DELHI;
25 October, 2013
03 Kartika, 1935 (Saka)

P.C. CHACKO,
Chairman,
*Joint Parliamentary Committee to examine Matters relating to
Allocation and Pricing of Telecom Licences and Spectrum.*

MINUTE OF DISSENT

—Dr. M. Thambi Durai, MP

We hereby reject this # JPC Report.

Our party and our leader, Hon'ble Chief Minister of Tamil Nadu, Dr. J. Jayalalithaa has been fighting to expose the 2G Scam, which is the mother of all scams in India from 2008, when majority were keeping silent. From Day one, we were saying and coming out in public with concrete evidences, which were later confirmed by CAG and CBI that the entire telecom scams of UPA Government revolves around# *** two Telecom Ministers A. Raja and Dayanidhi Maran, with the connivance of Prime Minister Manmohan Singh and Finance Minister P. Chidambaram. #***

CBI's charge-sheet clearly brings out in 23 boxes details of the huge money transfers. #***

CBI was forced to put a full-stop on the money trial# *** *** *** In JPC, our attempts to seek further investigation into these aspects were stonewalled by the majority# *** CBDT also told JPC about the benami or 19 shell companies floated in Kolkata to launder Rs. 214 crore paid to Kalaigarnar TV.#***

***The JPC never touched the subject of Aircel-Maxis scam. Dubious FIPB clearance granted by the then Ministry to the Aircel-Maxis deal was the starting point of corruption.# *** JPC did not even care to look into the dual policy adopted to allot to Reliance Communication, Tata Telecom and Shyam Telelink in October, 2007.

#*** The CAG's finding of huge loss up to Rs. 1.76 lakh crores to the public exchequer is very accurate.

In bid to cover up the truth, JPC did not give any opportunity to several other witnesses, who might have spilled the beans about the role of high profile persons in the Government like the Prime Minister and the Finance Minister.

#Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

Stamp of the Finance Minister is evident in Aircel-Maxis deal, dubious Dual Policy and 2G Spectrum scam in allotting 122 telecom licenses in collusion with Telecom Ministers Dayanidhi Maran and A. Raja, #*** Prime Minister Manmohan Singh had committed an unpardonable crime by becoming a mute spectator to this grand loot of the nation.

JPC which was formed to bring out the entire truth became a tool to cover up the truth to save the perpetrators of the 2G Scam. JPC's #*** actions have forced the people to lose their faith in the probes by a Parliamentary system, where things were ultimately decided on political lines.

#***

This kind of #*** functioning to collapse the JPC to cover-up the crimes would be ultimately questioned by the people of this great Nation. Such truth cannot be suppressed for a long time.

#***

Let truth alone prevail.

The Draft JPC Report needs to include all these points. Hence, on behalf of AIADMK Party, I submit this Dissent Note.

Sd/-

(DR. M. THAMBI DURAI)

#Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

MINUTE OF DISSENT

—Shri Sitaram Yechuri, MP

EXECUTIVE SUMMARY

The Joint Parliamentary Committee (JPC) set up to examine matters relating to “Allocation and Pricing of Telecom Licenses and Spectrum from 1998 to 2009”. The Chairman of the JPC has circulated a Draft Report to the Committee that has selectively quoted from evidence presented before it, ignored crucial documents and verbal evidence and has failed to bring out the basic elements of the 2G scam of 2007-2008. It has also failed to bring out the collective failure of the Cabinet in stopping the 2G spectrum scam, and specifically the roles of the Prime Minister and the Finance Minister.

Enclosed are a series of questions that need to be answered by the Prime Minister and the Finance Minister before a proper investigation can be completed. There were serious procedural irregularities in the functioning of the JPC. Despite repeated requests by the undersigned and other members of the Committee, it failed to call material witnesses the Prime Minister and the Finance Minister—and denied Shri A. Raja an opportunity to appear before the Committee and therefore denied the Committee an opportunity to cross examine him.

Therefore the undersigned is unable to accept and agree with the substance of the Report as well as the conclusions reached and is submitting a Dissent Note.

Substantive Shortcomings in the Report

The Report has tried to cover-up the significant undervaluation of UASL, licenses and spectrum—both for 35 cross-over licenses and new 122 licenses—issued during the period 2007-2008. Instead, it tries to first find fault with CAG’s methods of calculating possible presumptive loss, and then makes the completely illogical jump of concluding that as the CAG’s methods of calculation are faulty, that therefore there was no loss. If indeed the Report found CAG’s methods faulty, what prevented it from adopting another method of computing the loss?

However, while questioning such presumptive loss calculations, the Report refuses to address the central question—if a license was worth Rs. 1658 crore in 2001, what would it be worth in 2008? It defies all reason to argue that the exchequer did not suffer any loss, particularly when the value of rupee in 2008 was not the same as the value of the rupee in 2001 and the subscriber base in 2008 was 75 times that of 2001.

The Report fails to adequately analyse and apportion blame for the failure of the Government to follow the ‘auction route’ or indexation for apportionment of spectrum at a huge loss to the state exchequer, when it was clear that not only was this possible and preferable to a First-Come-First-Serve Policy for allocating spectrum at 2001 price but had also been discussed in Government as shown in numerous documents examined by the JPC.

The Report claims that the pegging of spectrum at low rates in 2008 was done in order to ensure low telecom rates for the end user. The Report fails to examine whether this was actually the case, and if so, why was there a change in the lock-in conditions—rollout norms and in the merger and acquisition policy? These changes meant that there was effectively no lock-in for

the parties securing cheap licenses and spectrum, enabling these parties to conduct private auction of the spectrum instead of a public auction. Instead of low license fees benefiting the subscribers, it resulted in windfall profits for a few select companies such as SWAN and Unitech.

The Report also fails to fully examine how the arbitrary changes in cut-off dates, FCFS procedures were explicitly designed to help a few select parties to jump queues and acquire licenses and spectrum.

The Report also fails to bring out the role of Shri A. Raja in changing the rules to allow "intra-circle" roaming, allowing parties securing licenses to by-pass roll-out obligations; instead, they could piggy back on existing operators and their infrastructure. Shri Raja also forced BSNL to provide such intra-circle roaming facilities to SWAN and other private parties (on unfavourable terms for the government owned telecom company), thereby helping them to acquire subscribers without making any investments and enhance their market value.

The Report also fails to examine the role of Shri A. Raja and the Finance Minister, Shri P. Chidambaram in helping private parties secure huge loans from public sector banks, merely on the basis of securing the allocation letters/Lols thereby causing a further loss to the exchequer.

The Report therefore fails to bring together the various elements of the scam—low license fees, changes in mergers and acquisition, rollout obligations and intra-circle roaming—all of these measures were a part of the overall scheme of allowing a few select parties to sell/change shareholdings in their companies, thereby making huge windfall gains without any capital investments and solely on the basis of acquiring licenses and spectrum.

The Report concludes that the Prime Minister was misled by Shri A. Raja, without even asking the Prime Minister on what count was he misled. Shri A. Raja in his letter dated 26th, December, 2007 to the Prime Minister has stated all the steps he would take for the issuance of the licenses. Why did the Prime Minister not — as Head of the Cabinet—exercise his authority to stop the scam, when it is clear from his letters that he was fully aware of the various elements of the scam? Even after the Lol's had been issued on 10th January, 2008, why did he not ask them to be cancelled, as licenses had still not been issued?

Similarly, though the Report concedes that the Finance Ministry and the Finance Minister had given his consent to the entry and the start-up spectrum fees being pegged in 2008 to 2001 value, it fails to hold him also responsible for this huge loss to the exchequer. The issue for the JPC is not whether the FM was a party to the scam, but whether he played his due role as the custodian of the nation's revenue. This, the FM unfortunately failed to do. The Report also fails to examine the role of the FM in providing huge loans to the private parties from public sector banks merely on the basis of the licenses and his role in letting SWAN and Unitech sell their licenses disguised as sale of shares.

At the very least, there was a conspiracy within the Ministry of Communications & IT and acquiescence thereof at the highest levels of government to ensure that the price of spectrum allocated in 2007-2008 was kept artificially low and allowing companies securing licenses through the bogus First-Come-First-Served route to garner huge windfall profits.

The Report fails to apply appropriate constitutional, legal and ethical yardsticks to determine and allocate responsibility, for instance in failing to recognize the constitutional principle of collective responsibility of the Cabinet or failing to recognise that an offence can be committed both by commission as well as acts of omission.

The Report has therefore failed to examine the matter holistically and in the proper perspective—for instance it is clear, based on the documents on record and evidence presented before the Committee, that the 2G scam was carried out to benefit certain private companies—

the Report therefore fails to examine the crux of the matter. The Report also fails to consider events occurring post 2008 that are relevant to the period in question and establish the overall pattern of events. The Report appears to merely be an exercise in damage limitation with an attempt to ensure that an appropriate scapegoat is sacrificed to placate public opinion, while those at highest levels of the Government are absolved of all liability.

The Need for Answers from the Hon'ble Prime Minister on Certain Questions before the JPC

The Draft Report prepared by the Chairman of the JPC, Shri P.C. Chacko states in Section 10.45 the following:

In view of the above, the Committee are inclined to conclude that the Prime Minister was misled about the procedure decided to be followed by the Department of Telecommunications in respect of issuance of UAS licences. Further, the assurance given by the Minister of Communications and Information Technology in all his correspondence with the Prime Minister to maintain full transparency in following established rules and procedures of the Department stood belied.

Shri A. Raja in his letter to Shri Chacko has stated that he had kept the Hon'ble PM informed at each step of the process and through personal meetings as well as during cabinet meetings. The Draft Report also shows that indeed he wrote 3 letters to the PM prior to the 10th January, 2008 when the Lol's for the 120 licenses were issued. The Draft Report also states that the PM asked the PMO to prepare a Note on Shri Raja's letter dated 26th December, 2007 wherein he details the various steps he was proposing to take.

Taking the above into account, it is not possible for JPC to come to any conclusion about the veracity of Shri Raja's claim or the statement in the Draft Report that the PM was misled without the PM answering the following:

1. Is it true that Shri Raja had met him personally in the first week of January, 2008 as stated in his letter to brief the Hon'ble PM about the procedure he was going to follow? In his submission, Shri Raja states, "Thereafter I met the Hon'ble PM in the first week of January 2008 and this issue was again discussed and he agreed with the proposed course of action of the DoT".
2. If this meeting did take place, did the Hon'ble PM agree with Shri Raja on the proposed course of action as Shri Raja claims?
3. On what specific count can we hold that Shri Raja misled the Hon'ble PM?
 - a. Is it about not auctioning/indexing license fees of 2001 for 2008?
 - b. Is it about the change in First-Come-First-Served policy regarding grant of license by which the date of fulfilling Lol first was to be used for grant of licenses and not the date of application
 - c. Is it about securing the consent of the Solicitor General to the procedure that was to be followed as stated by Shri Raja in his 26th December, 2007 letter?
4. On what count did Shri Raja not maintain transparency regarding procedures which Shri Raja was following in his communications with the Hon'ble PM as stated in the Draft Report
5. Even if the above is true — that Shri Raja misled the PM and did not maintain transparency as claimed by the Draft Report, the following issues still remain, which the Hon'ble PM needs to answer:
 - a. Even after Lol's were issued on 10th January, 2008, since the licenses had not been issued, the Government could have cancelled the Lol's and followed a

proper procedure. Why did the Hon'ble PM not take action as he had himself asked that the Note prepared by Pulok Chatterjee, Secretary PM, dated 6th January, 2008 be modified to take into account the status after issuing of the Lol's?

- b. The Hon'ble PM in October 29, 2011 had stated—in his meeting with TV editors—that the Finance Ministry and the DoT had agreed on keeping 2001 prices for entry and spectrum fees for 2008. Was this agreement between Finance Ministry and DoT reached before 10th January, 2008 or afterwards?
- c. On what basis did the Hon'ble PM drop the suggestion for auctioning of the licenses he himself had made to Shri Raja in his letter dated 2nd November, 2008?

Keeping in mind the high office he occupies, the Hon'ble PM can give answers to the JPC orally or in writing. Without answers from the Hon'ble PM on the above, it is difficult to understand how the JPC can come to any conclusion regarding the Hon'ble PM being misled by Shri Raja.

The Need for Answers from the Hon'ble Finance Minister on Certain Questions before the JPC

The Draft Report prepared by Shri P.C. Chacko has made a number of observations regarding the Finance Ministry, and therefore of the Finance Minister's handling of the 2G license issues. It is not possible for JPC to come to any conclusion about the role of the Hon'ble Finance Minister without answers to the following questions.

Specifically, the Draft Report mentions in Section 10.43 the following:

The Ministry of Finance have informed the Committee that no communication was sent by the Department of Economic Affairs in response to the letter dated 29 November, 2007 from the Department of Telecommunications. From the sequence of events, the Committee gather the impression that the Ministry of Finance was in agreement with the position explained by the Department of Telecommunications in respect of cross-over fee charged for allowing usage of Dual Spectrum Technology by the existing licensees.

Does the Finance Minister agree with the Draft Report that by not responding to the position as explained by DoT regarding license fees, the Ministry of Finance had in effect given its consent? Why did the Finance Ministry not press the issue of entry and spectrum fee being pegged to 2001 prices in 2008, especially as the DoT had referred to the Cabinet note where it was mandatory to have such an agreement between the Finance Ministry and the DoT as per Section 2.1.2 (3)?

As a formal consent is required from the Finance Ministry to fixing of license fees, did the Finance Ministry give such consent?

Shri A. Raja in his letter to Shri Chacko has also stated that his actions regarding license fees was with the concurrence of the Finance Ministry and the Finance Minister, whom he had met during the first week of January, 2008. Is it true that such a meeting took place and if so, is it correct that the Hon'ble FM had given his consent to license fee being kept at the 2001 level for the 2008 issuing of licenses?

Why did the Hon'ble FM agree — as can be seen from his note to the PM on 15th January, 2008 — to treat the matter of entry and spectrum fees for Lol's issued on 10th January, 2008 as a closed matter?

Why did the Hon'ble agree on 30th January, 2008 in his meeting with Shri A. Raja to treat the entry and spectrum fees for Lol's issued on 10th January, 2008 as a closed matter? As one of the most eminent lawyers of the country, the Hon'ble FM was undoubtedly aware that Lol's could be cancelled before the formal grant of licenses and therefore his consent was essential for the entry and spectrum fees being kept at 2001 levels in 2008. Why then did he not take action in asking for Lol's to be cancelled?

Why did the Hon'ble FM not push for the Government of India (Transaction of Business) Rule-4, which makes such concurrence mandatory regardless of the Cabinet note?

Why did the Hon'ble FM not push for the Government of India (Transaction of Business) Rule-7, which specifies in the second schedule that in cases which involves financial implications on which the Finance minister desires a decision of the Cabinet and if a difference of opinion arises between two or more Ministries and a Cabinet decision is desired, the matter shall be brought before the Cabinet?

Keeping in mind the high office he occupies, the Hon'ble FM can give answers to the JPC orally or in writing. Without answers from the Hon'ble FM on the above, it is difficult to understand how the JPC can come to any conclusion regarding the role of the Finance Ministry or the Hon'ble FM.

1. Introduction:

1.1 The present Joint Parliamentary Committee ("JPC") was set up *vide* a motion of the Lok Sabha dated February 24, 2011 (concurred with by the Rajya Sabha on March 1, 2011) in order to examine matters relating to "Allocation and Pricing of Telecom Licenses and Spectrum from 1998 to 2009". In accordance with the aforesaid Motions passed by the Parliament, the present Joint Parliamentary Committee was set up under the Chairmanship of Shri P.C. Chacko, MP, on March 4, 2011.

1.2 In the course of its hearings, the JPC examined a number of witnesses in person and through written evidence. To be noted that despite numerous requests by the undersigned and certain other members of the committee, the Committee failed to request and examine evidence from the Hon'ble Prime Minister and the Hon'ble Finance Minister despite the serious questions surrounding their involvement in the issues at hand. The undersigned would once again like to reiterate their dissatisfaction with the procedure followed by the Committee, particularly the Chairman, and therefore believes that the JPC failed to fulfil its mandate by examining *all* relevant evidence in the matter.

1.3 The Chairman of the Committee has now prepared and submitted a draft Report to the Committee (the "**Report**"). However, the contents thereof constrain the undersigned to regretfully present this Note of Dissent to the Report, on both procedural and substantive grounds as more fully detailed in this Note.

1.4 The undersigned is also concerned that the contents of the Draft Report of the JPC have been leaked in the public domain prior to its presentation before the JPC. The undersigned would like to place on record his displeasure at the leaking of the draft Report.

1.5 In the premises as aforesaid, keeping in mind the duty of this Committee and its Members toward both Parliament and the citizens of India, the undersigned is unable in all clear conscience, to sign and therefore accept the findings of the draft Report as presented by the Chairman of the Committee and in its current form and request the Chairman to reconsider the draft Report in its entirety.

2. Procedural Irregularities in the Functioning of the JPC:

2.1 Failure to call all material witnesses:

The undersigned and other members of the JPC repeatedly requested that the JPC examine evidence from the Hon'ble Prime Minister and the Hon'ble Finance Minister despite the serious questions surrounding their involvement in the issues at hand. Shri A. Raja is on record in his written evidence submitted to the JPC that he had kept the Prime Minister and the Finance Minister informed of every step during the allocation of UAS licenses/2G spectrum (in 2007-08) and also fixing of the license fees. In spite of such repeated requests, the Committee failed to call the Hon'ble Prime Minister and the Hon'ble Finance Minister and thereby failed in its mandate to examine all evidence.

It may be noted that this refusal is despite their being sufficient precedent enabling and permitting sitting ministers to be called to depose before parliamentary committees.

The need to seek evidence from the Prime Minister and the Finance is made clear when considering the following facts:

The Report states in Paragraph 10.45:

"In view of the above, the Committee are inclined to conclude that the Prime Minister was misled about the procedure decided to be followed by the Department of Telecommunications in respect of issuance of UAS licences. Further, the assurance given by the Minister of Communications and Information Technology in all his correspondence with the Prime Minister to maintain full transparency in following established rules and procedures of the Department stood belied."

Shri A. Raja in his letter to the Hon'ble Chairman of the JPC dated 22 April, 2013 has reiterated that he had kept the Hon'ble Prime Minister informed at each step of the process and through personal meetings as well as during cabinet meetings. The Report also acknowledges that indeed he wrote three detailed letters to the Prime Minister prior to 10th January, 2008 when the LoI's for the UAS licenses were issued. The Report also states that the Prime Minister asked the Prime Ministers Office (PMO) to prepare a Note on Shri Raja's letter dated 26th December, 2007 wherein he details the various steps he was proposing to take and as recorded by the Report.

Taking the above into account, it is not possible for JPC to come to any conclusion about the veracity of Shri Raja's claim or the statement in the Report that the Prime Minister was misled, without the Prime Minister answering the following:

- (i) Is it true that Shri Raja had met the Prime Minister personally in the first week of January, 2008 as stated in his letter to brief the Hon'ble Prime Minister about the procedure he was going to follow? In his submission, Shri Raja states, *"Thereafter I met the Hon'ble PM in the first week of January, 2008 and this issue was again discussed and be agreed with the proposed course of action of the DoT"*.
- (ii) If this meeting did take place, did the Hon'ble Prime Minister agree with Shri Raja on the proposed course of action as Shri Raja claims?
- (iii) On what specific count can we hold that Shri Raja misled the Hon'ble Prime Minister?
 - a. Is it about not auctioning/indexing license fees of 2001 for 2008?

- b. Is it about the change in First-come-first-served policy regarding grant of license by which the date of fulfilling Lol first was to be used for grant of licenses and not the date of application
- c. Is it about securing the consent of the Solicitor-General to the procedure that was to be followed as stated by Shri Raja in his 26th December, 2007 letter?
- (iv) On what count did Shri Raja not maintain transparency regarding procedures that Shri Raja was following, in his communications with the Hon'ble Prime Minister as stated in the Report?
- (v) Even if the finding of the Report is correct — that Shri Raja misled the Prime Minister and did not maintain transparency, the following issues still remain, which the Hon'ble PM needs to answer:
 - a. Even after Lol's were issued on 10th January, 2008, since the licenses had not been issued, the Government could have cancelled the Lol's and followed a proper procedure. Why did the Hon'ble Prime Minister not take action as he had himself asked that the Note prepared by Pulok Chatterjee, Secretary PMO, dated 6th January, 2008 be modified to take into account the status after issuing of the Lol's?
 - b. The Hon'ble Prime Minister in October 29, 2011 had stated — in his meeting with TV editors — that the Finance Ministry and the DoT had agreed on keeping 2001 prices for entry and spectrum fees for 2008. Was this agreement between Finance Ministry and the Department of Telecommunications (DoT) reached before 10th January, 2008 or afterwards?
 - c. On what basis did the Hon'ble Prime Minister drop the suggestion for auctioning of the licenses he himself had made to Shri Raja in his letter dated 2nd November 2007?

Keeping in mind the high office he occupies, the Hon'ble Prime Minister could have given his answers to the JPC orally or in writing. Without answers from the Hon'ble Prime Minister on the above, it is difficult to understand how the JPC can come to any conclusion regarding the Hon'ble Prime Minister being "misled" by Shri Raja.

Similarly, the Report has made a number of observations regarding the Finance Ministry, and therefore of the Finance Minister's handling of the 2G license issues. It is not possible for JPC to come to any conclusion about the role of the Hon'ble Finance Minister without answers to the following questions.

Specifically, the Draft Report mentions in Section 10.43 the following:

"The Ministry of Finance have informed the Committee that no communication was sent by the Department of Economic Affairs in response to the letter dated 29 November, 2007 from the Department of Telecommunications. From the sequence of events, the Committee gather the impression that the Ministry of Finance was in agreement with the position explained by the Department of Telecommunications in respect of cross-over fee charged for allowing usage of Dual Spectrum Technology by the existing licensees."

In view of the aforesaid, it is essential to confirm whether the Finance Minister agrees with the Report that by not responding to the position as explained by DoT regarding license fees, the Ministry of Finance had in effect given its consent? Further, the issue of why the Finance Ministry did not press the issue of entry and spectrum fee being pegged to 2001 prices in 2008,

especially as the DoT had referred to the Cabinet note where it was mandatory to have such an agreement between the Finance Ministry and the DoT as per Section 2.1.2 (3), deserves to be examined in greater detail. The Report also fails to examine whether any formal consent was given by the Finance Ministry (as is required for fixing of license fees).

Shri A. Raja in his letter to the Hon'ble Chairman of the JPC dated 22 April 2013 has also stated that his actions regarding license fees was with the concurrence of the Finance Ministry and the Finance Minister, whom he had met during the first week of January, 2008. The Report fails to examine if such a meeting took place and if so, if it is correct that the Hon'ble Finance Minister had given his consent to license fee being kept at the 2001 level for the 2008 issuing of licenses?

Further questions about the role of the Finance Minister that the Report has failed to address include:

- (i) Why did the Hon'ble Finance Minister agree — as can be seen from his note to the Prime Minister dated 15th January, 2008 — to treat the matter of entry and spectrum fees for Lol's issued on 10th January, 2008 as a closed matter?
- (ii) Why did the Hon'ble Finance Minister agree on 30th January, 2008 in his meeting with Shri A. Raja to treat the entry and spectrum fees for Lol's issued on 10th January, 2008 as a closed matter?
- (iii) As one of the most eminent lawyers of the country, the Hon'ble Finance Minister was undoubtedly aware that Lol's could be cancelled before the formal grant of licenses and therefore his consent was essential for the entry and spectrum fees being kept at 2001 levels in 2008. Why, then did he fail to take any action to stop the scam?
- (iv) Why did the Hon'ble Finance Minister not push for adherence to the Government of India (Transaction of Business) Rule-4, which makes such concurrence mandatory regardless of the Cabinet note?
- (v) Why did the Hon'ble Finance Minister not push for adherence to the Government of India (Transaction of Business) Rule-7, which specifies in the second schedule that in cases which involves financial implications on which the Finance Minister desires a decision of the Cabinet and if a difference of opinion arises between two or more ministries and a Cabinet decision is desired, the matter shall be brought before the Cabinet?

Keeping in mind the high office he occupies, the Hon'ble Finance Minister could have give answers to the JPC orally or in writing. Without answers from the Hon'ble Finance Minister on the above, it is difficult to understand how the JPC can come to any conclusion regarding the role of the Finance Ministry or the Hon'ble Finance Minister.

2.2 The Report relies solely on the written submissions of Shri A. Raja without providing any opportunity for him to provide verbal evidence or for cross-examination by the JPC:

Given the crucial testimony of Shri A. Raja, it is clear that the JPC ought to have taken the time to examine the evidence of the ex-Minister for Communications and Information Technology in a meticulous and comprehensive fashion. However, the JPC has had to rely merely on written submissions presented by Shri A. Raja and no opportunity to cross-examine the deponent was provided. Cross-examination of Shri A. Raja would likely have clarified the context and statements made in the written submissions and would have enabled a full and contextual picture of the various irregularities committed by the Government of India to have emerged.

2.3 The Report has been prepared without consultation with and inputs of the members of the JPC:

In preparing the Report, the Chairman failed to discuss any of the substantive findings with the members of the JPC and has prepared a draft that is at variance with the evidence in front of the JPC as well as the opinion of the members of the JPC on a number of grounds. As a procedure, an agreement on the major findings of the JPC should have been arrived at before a detailed report. The Chairman made no attempt to reach a consensus on the major findings of the JPC but is attempting to provide his views as the Report of the JPC.

2.4 The Report is selective in its use of evidence:

A mere perusal of the Report indicates not only that the Report fails to adequately examine the evidence pertaining to the period when the UPA alliance was in government, but further that there appears to be a deliberate attempt to selectively quote from documents or completely ignore crucial evidence.

For instance, the Note prepared by Shri Pulok Chatterjee, Prime Minister's Office for the perusal of the Prime Minister has been selectively quoted and not annexed to the Report. Similarly the discussions of the Hon'ble Finance Minister and the MoCIT on 30 January 2008 as well as the Hon'ble Finance Minister's note dated 15 January 2008, while referred to have not been sufficiently examined or annexed to the Report. The fact that the Report attempts to brush over the scam committed while the UPA government was in power is evident from the fact that only nine documents are annexed to the Report that pertain to the entire 2007-08 period — that too these are mostly innocuous documents.

Crucial documentations such as the correspondence to and from the Prime Minister and MoCIT are not annexed to the Report (and presumably not examined in any detail). The number of documents annexed to the Report apropos of this period makes an interesting comparison with the number of documents examined and annexed to the Report apropos of the period the NDA government was in power.

3. Substantive Shortcomings of the Report:

In addition to the procedural infirmities in the conduct of the JPC as detailed above, the undersigned is unable to accept and agree with the substance of the Report as well as the conclusions reached therein.

The Report has, in examining the issues at hand and arriving at its conclusions selectively quoted from evidence presented before it, found it convenient to ignore crucial documents and verbal evidence and has failed to appreciate crucial evidence in the proper context.

It is clear that the Report has failed to consider the facts pertaining to the allocation and pricing of telecom licenses in their totality and as part of an overall pattern. The Report is replete with inaccuracies and contradictions—the lack of consistency may be highlighted by a cursory comparison of the findings of the Report to the judgement of the Hon'ble Supreme Court in the matter of *Centre for Public Interest Litigation v. Union of India and Ors.* WP(C) No. 423/2010 (Annexure-I), the findings of the One Man Committee (OMC) comprising Justice Shivaraj Patil who submitted his Report to the Government of India on 31 January, 2011 (Annexure-II), as well as the seemingly different yardsticks used to judge the policy and administrative decisions taken at the time when the NDA government was in power as opposed to the UPA government.

The points of difference with the interpretation of facts as presented in the Report are broadly around the following issues:

- (i) The Report has failed to appreciate that there was significant undervaluation of UASL licenses and spectrum issued in the period 2007-2008. Therefore, there is a failure to recognise the presumptive loss occasioned by the arbitrary and *mala fide* allocation of UAS licenses and spectrum by the Government of India in the period 2007-2008;
- (ii) The failure of the Report to adequately analyse and apportion blame for the failure of the Government to follow the 'auction route' or indexation for apportionment of spectrum at a huge loss to the state exchequer (when it was clear that not only was this possible and preferable to a First-Come-First-Serve Policy for allocating spectrum at 2001 price but had also been discussed in Government (specifically the Ministry of Communications and IT, the Finance Ministry and the Prime Ministers Office) as shown in numerous documents examined by the JPC);
- (iii) The Report claims that the pegging of spectrum at low rates in 2008 was done in order to ensure low telecom rates for the end user. The Report fails to examine whether this was actually the case and if so why was there a change in lock-in conditions — roll-out norms and in the merger and acquisition policy. These changes meant that there was effectively no lock in for the parties securing cheap licenses and spectrum enabling therefore for a private auction of the spectrum instead of a public auction. Instead of gains to the consumers, cheap licenses and spectrum allowed for huge windfall gains to a select few parties;
- (iv) Failure to examine how the arbitrary changes in cut-off dates, and First Come First Serve (FCFS) procedures were explicitly designed to help a few select parties to jump queues and acquire licenses and spectrum;
- (v) Failure to examine that Shri A. Raja by allowing "intra-circle" roaming and changes in roll-out guidelines, allowed a select few of the new licensees to start acquiring subscribers without putting in any capital investments as was called for in the original roll-out plan;
- (vi) Changing mergers and acquisition conditions to allow a few select parties to sell/change shareholdings in their companies thereby gaining windfall gains without making any capital investments and solely on the basis of acquiring licenses and spectrum;
- (vii) Failure to recognize the roles played by the Hon'ble Prime Minister, the then Finance Minister and recognize their responsibility in the arbitrary and *mala fide* allocation of UAS licenses/2G spectrum by the Government of India in the period 2007-2008 as well as changes introduced in the roll out obligations, mergers and acquisition guidelines to help a select set of parties make windfall gains;
- (viii) Failure to recognize numerous procedural infirmities in the allocation of the UAS licenses by the Department of Telecommunications in the period 2007-2008;
- (ix) Failure to apply appropriate constitutional, legal and ethical yardsticks to determine and allocate responsibility, for instance in failing to recognize the constitutional principle of collective responsibility of the Cabinet or failing to recognise that an offence can be committed both by commission as well as acts of omission.

The Report has therefore failed to examine the matter holistically and in the proper perspective—for instance it is clear, based on the documents on record and evidence presented before the Committee, that the 2G scam was carried out to benefit certain private companies—

the Report therefore fails to examine the crux of the matter. The Report also fails to consider events occurring post 2008 that are relevant to the period in question and establish the overall pattern of events. The Report appears to merely be an exercise in damage limitation with an attempt to ensure that an appropriate scapegoat is sacrificed to satiate public opinion, while those at highest levels of the Government are absolved of all liability.

3.1 Undervaluation of UAS licenses allocated in 2007-08 and Failure to Follow the Auction/Indexation Method to Price Spectrum:

It is clear from evidence on record (and that has been ignored by the Report) that the UAS licenses and spectrum allocated by the Government of India in the period 2007-08 was seriously undervalued thereby causing massive losses to the State exchequer and enabling windfall gains to private parties.

It is uncontroverted fact that the UPA Government under the leadership of Prime Minister Shri Manmohan Singh, issued a total of 184 licenses with spectrum at 2001 prices in the following break-up:

- (i) 27 licenses by Shri Dayanidhi Maran till May 2007,
- (ii) 122 UAS licenses by Shri A. Raja till July 2008,
- (iii) 35 dual technology licenses by Shri A. Raja between October 2007 and 10th January 2008.

It is relevant at this point to briefly reiterate certain, facts with respect to the allocations of licenses and spectrum in this period.

Once the UPA government came into power in 2004, Shri Dayanidhi Maran was appointed the Hon'ble MoCIT.

In the period between January 11, 2006 and December, 2006, a GoM was constituted *inter alia* to focus on the vacation of spectrum by the defence forces. It is clear that the GoM was formed with the PM's approval and that the original Terms of Reference (ToR) for the GoM as drafted in February, 2006 included the issue of spectrum pricing (Annexure-IV). The ToR of this GoM were subsequently changed upon insistence of the MoCIT to ensure that no reference was made to pricing of spectrum with the new Terms of Reference (submitted to the GoM on 16 November, 2006 — Annexure-V) primarily concentrating on making available additional spectrum. On 7 December, 2006, based on Shri D. Maran's letter to the Prime Minister and 'the Prime Minister's approval' — as mentioned in the new ToR — a fresh and modified Terms of Reference for the GoM was issued, which retains most of the Terms of Reference from 23 February, 2006, except explicitly deletes the Terms of Reference related to spectrum pricing (Annexure-VI).

Various licenses were granted in this period post the unilateral change in UASL allotment policy as noted above (by the Hon'ble MoCIT) with spectrum provided at 2001 rates. As per Cabinet decision of 2003, it is presumed that all such licenses being issued at 2001 prices had the sanction of the Finance Minister, as the pricing of spectrum was also a revenue issue and therefore required the Finance Ministry's consent.

Shri A. Raja then took over as MoCIT in End-May 2007.

On 6 June 2007, the then Finance Secretary, after discussions with the then Finance Minister, P. Chidambaram, wrote to D.S. Mathur, Secretary, Department of Telecommunications (DoT), asking him to reconsider the matter of including spectrum pricing in the Terms of Reference for

the GoM yet again. He states that *"this matter has been discussed at the level of the Finance Minister. It is our view that for optimum utilisation of spectrum, a sound policy on spectrum pricing is necessary"*. The methodology to be followed for spectrum pricing would logically follow the vacation of spectrum, which is the main task of the GoM. *"I, therefore, request you to reconsider the matter and include spectrum pricing in the ToR for GoM"*. (D.O. No. 3/11/2003-Inf. dated 06 June, 2007 by Dr. Subbarao, Secretary, DEA, MoF), (Annexure-VII)

On 15 June 2007, D.S. Mathur, Secretary, DoT replied to Dr. Subbarao, Secretary, DEA, Finance Ministry, reminding him of the discussion that has occurred between the Telecom Minister and the Prime Minister between January and February, 2006 as well as the revised draft sent by Shri Dayanidhi Maran to the Prime Minister on 16 November, 2006. He cites the resultant ToR issued by the Cabinet Secretary on 7 December, 2006 and states, *"This matter is discussed in a meeting with MoCIT (A. Raja) at this time"*. And it was felt that the ToR may now remain as they were issued in December last year". (Annexure-VIII)

There was no further communication between the MoF and the DoT on the matter of ToRs related to the GoM.

On 13 April 2007 the Telecom Ministry sent a specific reference (to TRAI) No, 16-3/2004-BS-II seeking a change in the "present policy" (existing at that time). The reference was made to specifically "review its policy" (Annexure-IX), On 28 August, 2007 the TRAI, after considering inputs of all concerned parties, announced its recommendations on multiple issues, in a single consolidated document, *inter alia* dealing with the issues of no-cap, M&A rules and roll-out obligations. (Annexure-X)

On 24 September 2007 Shri A. Raja put out a 2-line press release announcing the cut off date of 01 October, 2007 for processing of applications. (Annexure-XI)

On 19 October 2007 the DoT issued a Press Release, announcing *inter alia* its acceptance of the TRAI recommendations dated August 28, 2007. The Report is however silent on an important set of deviations made in the announced policy from the relevant TRAI Recommendations *i.e.* in respect to the M&A rules and roll-out obligations etc. (Annexure-XII)

On 19 October 2007, the TRAI, Chairman, N. Misra wrote to caution the DoT to not deviate from TRAI's recommendations without following due process and to consult them before implementing the recommendations etc. (Annexure-XIII)

On 25 October 2007 D.S. Mathur (Secretary, DoT)/Manju Madhawan (Member, T) made an internal memo, recommending three options including auctions/indexation for 2G spectrum instead of first come first served. (Annexure-XIV)

By 26 October 2007, 575 applications for new UAS licenses were received.

On 27 October 2007, DoT sent a reference to the Law Ministry for an opinion (Annexure-XV). The Law Ministry replied on 1 November, 2007 with a direction that the matter be sent to an EGoM, a course of action that the Hon'ble MoCIT overruled. (Annexure-XVI)

On 2 November, 2007, Shri A. Raja wrote to the Prime Minister, informing him:

- (i) That the DoT is following TRAI's recommendations on no cap.
- (ii) That 575 applications have been received till 01 October 2007.
- (iii) That the Law Minister has rejected DoT's demand for a legal opinion and instead directed them to an EGoM. This *"suggestion of the Law Ministry is totally out of context."*

- (iv) That the DoT will follow the First Come, First Served (FCFS) process.
- (v) That cut-off date will be moved up from 01 October, 2007 to 25 September, 2007, *i.e.* when the news item on announcement of the cut-off date appeared.
- (vi) That procedure for processing remaining applications will be decided later if any spectrum is left.
- (vii) That the DoT is not deviating from existing procedure.

(Annexure-XVII)

On 2 November, 2007 the Prime Minister wrote back, cautioning Shri A. Raja and directing him to:

- (i) Examine issues relating to allocation of GSM spectrum to CDMA operators, enhancement of subscriber-linked criteria and processing of large number of applications received for fresh licenses against the backdrop of inadequate spectrum to cater to overall demand.
- (ii) He reminded him of the TRAI's recommendations that require an early decision and summarized the key issues in an 'annexed note', seeking urgent consideration of the Minister to ensure fairness and transparency and most importantly directing him to let him know of the position "*before any further action is taken*".

(Annexure-XVIII)

On 2 November, 2007 Shri A. Raja wrote a second letter in response to the Prime Minister's letter stating:

- (i) The issue of auction was considered by TRAI and the Telecom Commission and has not been recommended.
- (ii) It will be unfair, discriminatory, arbitrary and capricious to auction spectrum to new applicants.
- (iii) Only 60-65 MHz of spectrum is left. 30-40 MHz has been allocated. Therefore there is enough scope for allotment of spectrum to a few operators after meeting the needs of existing operators and licensees.

(Annexure-XIX)

On 22 November 2007 the Finance Secretary, Dr. Subbarao wrote to the Secretary, DoT, questioning as to how spectrum was being awarded at prices discovered in 2001 — of Rs. 1600 crores for pan India allocation. He also directs immediate halt of all grant of UAS licenses/spectrum (Annexure-XX).

On 29 November 2007, DoT Secretary wrote to the Finance Secretary, Shri Subbarao, explaining that the decision is being taken consistent with the Cabinet decision of 2003 (Annexure-XXI).

On 26 December 2007, Shri A. Raja *vide* a letter of the same date informed the Prime Minister about the following:

- (i) That he was going to follow modified First Come, First Serve process.

- (ii) That he'd had a discussion with the then head of GoM on spectrum, Shri Pranab Mukherjee, as well as an agreement with the Solicitor General of India, Shri Ghulam Vahanvati.
- (iii) That Tatas would also be given spectrum under dual technology as per existing policy.
- (iv) That he was going to proceed immediately.

(Annexure-XXII)

This letter was acknowledged by the Prime Minister on 3 January 2008. (Annexure-XIII)

Pulok Chatterjee, Secretary, PMO, wrote a note on spectrum issues to the Prime Minister on 31 December 2007. (Annexure-XXIV)

Pulok Chatterjee thereafter wrote a comprehensive note on norms and methods to be adopted by DoT (for allocation of spectrum) on 6 January 2008. (Annexure-XXV)

Additional Secretary (Economic Affairs) thereafter wrote a concept paper on revising entry fee and auctioning spectrum on 9 January 2008. (Annexure-XXVI)

Press release(s) on first come first serve/Lol processing was issued on 10 January 2008. (Annexure-XXVII)

On 10 January 2008 UAS licenses were allotted to 121 operators in 2008 at 2001 prices.

An additional 35 dual technology operators also bought spectrum in 2007-2008 at 2001 prices.

The Prime Minister on 11th January, 2008 suggests that the note of Pulok Chatterjee be modified taking into account that Lol's have been issued on 10th January, 2008. (Annexure-XXVIII)

Pulok Chatterjee thereafter prepared a Note of 15 January 2008, reiterating the points in the 6th January Note. Crucially, a noting in the file dated 23rd January states "*PM wants this informally shared with the Deptt. and does not want a formal communication and wants PMO to be kept at arms length pl.*" (Annexure-XXIX)

The Finance Minister then prepared a note to the Prime Minister on Spectrum Charges dated 15 January 2008 accepting the entry price for the Lol's and cross over/dual technology license and auction route for the future. (Annexure-XXX)

A meeting was held between the MoCIT and the Finance Minister on 30th January, 2008. The gist of the discussions as recorded by Secretary, Finance indicates that FM agreed that "we are not seeking to revisit the current regimes for entry fee or for revenue share". To be noted that at this time, only Lol's had been placed so the Government could still cancel the Lol's or change the entry fee.

UAS licenses were signed between 27th February and 7th March 2008, after which entry prices could not be changed without legal consequences.

On 22 April 2008 new M&A guidelines allowing acquisitions were announced. (Annexure-XXXI)

Thereafter, an Office Memorandum on Allocation and Pricing of 2G Spectrum dated March 25, 2011 was prepared by Dr. PGS Rao, Dy. Dir. Infrastructure and Investment Division, Deptt. of Economic Affairs, which was seen by the then Finance Minister. (Annexure-XXXII)

From the aforesaid, the conspiracy to ensure that spectrum was allocated at 2001 rates without any indexation or auction in order to ensure private windfall gains is apparent. The fact that 7 years had passed since the 2001 rates for spectrum were determined would at the very least have necessitated a need for appropriate indexation (taking into account inflation, number of subscribers having increased by 75 times from the 2001 base), if not consideration of the state of the industry and the changed economic and market conditions. It is apparent that indexation/auction should have been the only equitable and legal method of spectrum allocation.

The Report seeks to use TRAI's Recommendations of 28 August 2007 as the basis for not revising the 2001 entry fee. It is clear that the Government was well aware that TRAI's recommendations were only of an advisory nature and not binding on the government. In any case, as will be shown later on in this Note, the government violated other crucial recommendations of TRAI, without referring the matter back to TRAI as it is bound to do under the TRAI Act, following which it could overrule TRAI's recommendations. On the issue of entry fee, or any other policy matter, the government cannot use TRAI recommendations as the excuse. As noted in the Supreme Court decision in the *Centre for Public Interest Litigation Case*.

"the entire approach adopted by TRAI was lopsided and contrary to the decision taken by the Council of Ministers and its recommendations became a handle for the then the Minister of C&IT and the officers of the DoT who virtually gifted away the important national asset at throw away prices by willfully ignoring the concerns raised from various quarters including the Prime Minister, Ministry of Finance and also some of its own officers."

".....we have no hesitation to record a finding that the recommendations made by TRAI were flawed in many respects and implementation thereof by the DoT resulted in gross violation of the objective of NPT 1999 and the decision taken by the Council of Ministers on 31.10.2003."

"We may also mention that even though in its recommendations dated 28.8.2007, TRAI had not specifically recommended that entry fee fixed at 2001 rates, but paragraph 2.73 and other related paragraphs of its recommendations state that it has decided not to recommend the standard option for pricing of spectrum in 2G bands keeping in view the level playing field for the new entrants. It is impossible to approve the decision taken by the DoT to act upon the recommendations."

"The recommendations made by TRAI on 28.8.2007 was not placed before the full telecom Commission which, among others, would have included the Finance Secretary. The notice of the meeting of the Telecom Commission was not given to any of the non permanent members despite the fact that the recommendations made by TRAI for allocation of spectrum in 2G bands had serious financial implications.... Therefore, it was absolutely necessary for the DoT to date the opinion of the Finance Ministry as per the requirement of the Government of India (Transaction of Business) Rules, 1961."

"In view of the approval by the Council of Minister of the recommendations made by the Group of Ministers in 2003, the DoT had to discuss the issue of spectrum pricing with the Ministry of Finance. Therefore, the DoT was under an obligation to involve the Ministry of Finance before any decision could be taken in the context of paragraphs 2.78 and 2.79 of TRAI's recommendations."

It appears clear from the record that various officials within the Government had, prior to 2008, questioned the equity and logic behind continued use of a First Come First Serve policy of allocation of licenses and spectrum, without appropriate auction/benchmarking of the

spectrum. Sufficient documentation exists as given above to show that advice had been tendered to those at the highest levels of Government to not allow spectrum to be allocated on a first come first serve basis at 2001 prices all of which was ignored. Further, it may be remembered that spectrum pricing was removed from the ToR of the GoM. The aforesaid is made abundantly clear from a cursory examination of the following documents:

- (i) TRAI's DOs. dated 15th October, 2007, 19th October, 2007 and 14th January 2008 (Annexures-XXXIII, XXXIV, XXXV respectively);
- (ii) An internal meeting held with senior officers of the DoT with MoC&IT in which multiple alternatives including auctions were discussed;
- (iii) Internal note authored by the then Secretary, DoT. DS Mathur and Member Finance Manju Madhawan who held that bidding/auctions may be adopted since "award of new licenses for UASL has to be transparent and must withstand any legal scrutiny at a later date";
- (iv) Law Minister Shri Bhardwaj's specific advice on 1st November, 2007 to have the entire 2G spectrum allocation matter to be "considered by an EGoM and in that process legal opinion of AG be obtained";
- (v) PMO letter dated 2nd November 2007 in which he not only reminded the MoCIT about a Union Cabinet decision of 1999/policy regarding allocation of licenses being linked to availability of spectrum, but also further recommended consideration of two options — auction or revision of entry fee which is currently (at that time) benchmarked on old spectrum auction (2001) figures.
- (vi) Finance Secretary's letter dated 22nd November 2007, questioning "It is not clear how the rate of Rs. 1600 crores, determined as far back as 2001, has been applied for license given in 2007 without any indexation". Also instructing the DoT to "All further action to implement the above licenses may please be stayed".
- (vii) Additional Secretary (Economic Affairs) concept paper on revising entry fee and auctioning spectrum on 9 January 2008.

Even after the Lol's were issued, as detailed in the Office Memorandum on Allocation and Pricing of 2G Spectrum, Dr. PGS Rao, Dy. Dir. Infrastructure and Investment Division, Deptt. of Economic Affairs dated 25th March, 2011, the Lol's could have been cancelled and the nation would have been saved of a huge loss. This was not done though the Prime Minister and the Finance Minister were fully aware of illegal actions of the MoCIT, Shri A. Raja.

At the very least, there was a conspiracy within the Ministry of Communications & IT and acquiescence thereof at the highest levels of government to ensure that the price of spectrum allocated in 2007-2008 was kept artificially low by a failure to either appropriately index the spectrum to account for passage of time and a change in market conditions, inflation etc. as well as by failing to utilize the auction route for allocation which would have automatically pegged the prices at appropriate market rates (as shown in the 3G auctions).

3.2 Presumptive Loss on account of allocation of UAS licenses and spectrum in 2007-08:

The Report has sought to question the CAG calculations of the presumptive loss. It has sought to argue that presumptive loss is not an auditing term and that any presumptive loss calculations are not called for as telecommunication is an infrastructure sector and therefore should not be seen as a tool for revenue generation. It has also questioned the method adopted by the CAG in each of the presumptive loss calculations. However, while questioning such

presumptive loss calculations, the Report refuses to address the central question — if a license was worth Rs. 1658 crore in 2001, what would it be worth in 2008? Even a simple consideration that a rupee in 2001 and 2008 are not the same and the fact that there were only 4 million mobile subscribers in 2001 against 300 million mobile subscribers in 2008 would have necessitated a change in entry price — something the Report refuses to consider.

The Report questions the Comptroller & Auditor General of India (CAG) for using an estimation of market prices if the spectrum had been auctioned as the basis of the presumptive loss. There are two ways of examining the loss to the exchequer — one an econometric method by which we compute the value of a license based on the time value of money and increase of subscriber base and therefore revenue/MHz of spectrum. The other method is to determine the market price — what the market would have paid based on certain known facts.

The CAG estimated the market price in different ways — by the offer of S Tel for a pan-India license, the sale of equity by Unitech, and Tata Teleservices and by comparing it to the 3G auction price. This gave the figures of Rs. 57,600 crore to 1.76 lakh crore — depending on the method adopted. The reason that CAG did not differentiate between 2010 and 2008 prices is quite simple — the market prices in 2007 and early 2008 would have been higher than 2010 as the financial crash took place later and the markets had not fully recovered even in 2010.

CAG's argument was that an estimation of market price is a better indicator of the value of the license and not an econometric model. TRAI, in its *Recommendations on Spectrum Management and Licensing Framework* dated 11th May 2010 after comparing various methods, also finally suggested using the 3G license fee price for fixing all future license fees. The reason given was the same as CAG — this is the price discovered through a market mechanism and is a better indicator of price. (Annexure-XXXVI)

In its 11th May 2010 recommendations, clauses 3.80 to 3.82, TRAI has discussed this in great details. It has analysed why the efficiency of the 2G and 3G spectrum is not very different and has shown that 2G spectrum should really be regarded as 2.75G with current technologies in terms of efficiency. It has also pointed out that it is not just efficiency of the spectrum but also the size of the market and supply-demand position that determines the price of the spectrum. Obviously, the existing voice market is much the larger market and will be a major determinant in deciding the price of the spectrum. Taking all this into account, TRAI's recommendations were: "*The Authority, therefore, recommends that the 3G prices be adopted as the 'Current price' of spectrum in the 1800 MHz band.*" (Clause 3.82, page 189, Recommendations on Spectrum Management and Licensing Framework dated 11th May 2010).

It may be noted that it is not possible to obviously go back in time to 2007-2008 and recreate the conditions available then to find out what the market price would have been. Therefore, both TRAI and CAG adopted the 3G auction price for all spectrum as a basis for calculating the cost of the spectrum. Obviously, the market conditions today are different from that of 2007-2008, with the crash in EU and the Indian economy slowing up; current conditions cannot be used to justify low prices in 2008.

If the Report did not agree with the CAG calculations, it could still have adopted an econometric model for calculating loss. Though CAG did not do this, TRAI has done this exercise. In its *Recommendations on Spectrum Management and Licensing Framework* dated 11th May 2010, TRAI estimated the price of license in 2009 using just the time value of money. With a standard discounted cash flow, TRAI calculated that based on a 15% discounting rate, the 2001 price of Rs. 1658 crore would have been worth Rs. 5074 crore. Taking the Adjusted Growth Rate per MHz, TRAI also computed a figure of Rs. 8,285 crore for the 2G license or 5 times the

amount that the Government collected. The loss then would come to Rs. 36,000 crore by this method. If indeed the Report felt that this was a better method to compute loss to the exchequer, why did Committee not suggest using these figures for computing the loss? Why claim that there has been no undervaluation of the spectrum at all by finding faults with all the methods CAG used?

3.3 Failure to appropriately deal with TRAI Recommendations of August 27, 2007—change in merger and acquisition policy pertaining to telecom companies leading to windfall profits to private parties:

The second aspect of the scam carried out while the UPA government was in power, involved the inconsistent and arbitrary treatment to TRAI recommendations (of August 27, 2007) in order to ensure that while no auction/indexation of spectrum was carried out (and spectrum could therefore be sold at lower than market value rates) and further to ensure that the terms and conditions of the license agreements were modified to remove all obligations on the licensees (such as lock-in provisions and roll out conditions) and make it easier for select parties to sell their shares at high prices without making any further investments.

It has been argued that that 2G spectrum was allocated at low rates in order to keep the end prices to the consumer low. However this does not hold water as the Government of India also illegally modified the M&A guidelines, allowing for sale of equity in telecom companies and thereby allowing various private individuals to make windfall gains. This means that though the national exchequer did not receive the market price of 2G spectrum, the sale of equity in the companies receiving the license/2G spectrum was nothing but private sale of spectrum at current market price.

This was therefore only converting what should have been an open, transparent public auction (of the kind concluded on 3G spectrum) into a privately held auction by beneficiaries of the largesse. This also explains why Swan and Unitech were able to get 5-6 times the value of the spectrum from only a part of their equity sale. (Rs. 9,400 crores and Rs. 11,600 crores for SWAN and Unitech respectively).

The crucial document in this regard is the set of recommendations submitted by TRAI to the DoT on 28 August, 2007 (also referred to previously in this Note in the context). In these recommendations (which are required to be read as a whole), TRAI advised the government *inter alia*:

- (i) that there was no need to carry out auction for 2G spectrum which could be allocated in accordance with extant policy *viz.* First Come First Serve etc., but that in future all spectrum should be auctioned;
- (ii) that while there was no need to carry out an auction for 2G spectrum, in order to ensure that the end user benefited from the low rates at which spectrum was being provided, that lock-in conditions must be retained in the license agreement and that roll-out obligations must be met and that in this respect merger and acquisition rules pertaining to telecom companies should not be changed;
- (iii) that there was no need to cap the access service providers in a region.

In its aforesaid Recommendations, TRAI specifically cautioned against the possibility of windfall gains to private telecom companies in the event M&A rules pertaining to such companies were to be changed (and if no indexation/auction of spectrum were to be carried out). TRAI also specifically recommended that "*Any proposal for permission of mergers and acquisitions should*

not be entertained till rollout obligation is met — this would mean a prohibition against M&A for 1 year in metros and 3 years in circles. In the same set of recommendations, TRAI, after careful consideration and to make sure that operators actually invested in the infrastructure based on the licenses/2G spectrum that they received, recommended that the rollout obligations prescribed in the UAS licenses should remain unchanged. This would have ensured 90% service areas within metros covered within 1 year of the effective date of the license and 50% of district headquarters covered within 3 years of effective date of the license.

The then MoCIT, Shri A. Raja, unilaterally and without referring the Recommendations back to the TRAI for reconsideration (which the Government is entitled to do under the provisions of the TRAI Act), sanctioned the issuance of a DoT press release on 19 October 2007. The Report is silent on an important set of deviations from TRAI Recommendations in this Press Release *i.e.* in respect of the roll out conditions, lock in conditions and merger and acquisition policy and in fact merely mentions (paragraph 10.36) that the MoCIT approved the recommendations with “*certain changes*”.

It is reiterated that the Government was under no obligation to follow the TRAI recommendations but having decided to do so should have either followed them in totality rather than cherry picking specific recommendations; or in the alternative, and what was clearly the better policy option (as recognised by the Supreme Court in the *Centre for Public Interest Litigation case*) should have been to send the relevant recommendations back to the TRAI for reconsideration.

Instead, the Hon’ble MoCIT, Shri A. Raja unilaterally amended:

- (i) The rollout obligations in the UAS licenses, without referring the matter back to the TRAI — first, in the press release of 19th October 2007 and later: through a specific notification dated 10th February 2009 (Annexure-XL). The rollout obligation was changed and linked to the date of spectrum allocation rather than the original recommendations linking it to the effective date of the license;
- (ii) the M&A guidelines first in his press release dated 19th October 2007 and later through formal guidelines announced on 22nd April 2008. In both of these, the Government of India prohibited mergers in the same service area but surreptitiously allowed for acquisitions before the rollout obligations had been met. The fact that the M&A guidelines had been unilaterally amended had also been accepted by the Ministry of Communications in its response to Parliamentary Question No. 2940 on 22nd April, 2010 (Annexure-XLI).

These actions are a clear violation of the TRAI recommendations, carried out illegally and done without reference to TRAI and therefore constitute a specific violation of the TRAI Act (Section 11, fifth Proviso).

Disturbed by the fact that the DoT had taken unilateral action and disregarded the Recommendations of TRAI, the Chairman of TRAI, Shri N Misra through his letter dated 19 October 2007, wrote to caution to the DoT to not deviate from TRAI’s recommendations without following due process, to consult them before implementing the recommendations and to read the TRAI Recommendations as a whole and not cherry pick specific recommendations to follow etc. It appears that this letter was completely ignored by the DoT and the MoCIT.

The change in M&A policy when taken in the proper context as documented above, clearly shows the conspiracy in attempting to ensure that those private individuals with political patronage could make windfall gains by re-selling undervalued spectrum at market rates (as pointed out above, by selling shareholdings in the companies that had acquired the undervalued spectrum).

In summary, all the violations of the TRAI recommendations of August 28, 2007 detailed above allowed Telecom Minister A. Raja to select a handful of companies to whom spectrum was given at 2001 prices under the garb of no cap, followed by an allowance to sell equity (be acquired) by changing the M&A guidelines and its link to rollout obligations. So not only were the licenses/spectrum given at throwaway prices but the companies were able to sell to make windfall profits without making any infrastructure investments — in violation of TRAI's recommendations and by consequence mandatory provisions of the TRAI Act.

3.4 Failure to examine issues pertaining to Intra-Circle Roaming:

The Report has failed to examine another crucial aspect of the sale and allocation of telecom licenses and spectrum by completely neglecting the matter of "intra circle" roaming and more specifically how the Hon'ble MoCIT Shri A. Raja permitted "intra-circle" roaming and changes in roll-out guidelines that allowed a select few of the new licensees to start acquiring subscribers without putting in any capital investments as was called for in the original roll-out plan.

It is clear from various documents publicly available that the Department of Telecommunications, under the stewardship of Shri A. Raja permitted and encouraged state owned companies (such as BSNL) to invest heavily in infrastructure development. The DoT followed this up with arbitrarily and with *mala fide* intent (and in disregard of TRAI Recommendations) changing the conditions of the UAS licenses and permitted intra-circle roaming (and the sharing of infrastructure) to ensure that private companies could make windfall gains at the cost of public companies by not having to invest in infrastructure or meet roll out conditions.

In its recommendations on the "Review of license terms and conditions and capping of the number of access providers" dated 28 August 2007, TRAI recommended that in future all spectrum bands (special reference to 3G bands) other than bands used for the 2G services, should be auctioned. In addition, in its earlier recommendations on the specific subject of allocation and pricing of the 3G spectrum dated 27 September 2006 the TRAI had specifically recommended bidding as the preferred method for award of spectrum in order to ensure efficient utilization of the scarce resource. In its recommendation dated 11 April 2007 on the subject of infrastructure sharing the TRAI notes:

"3.2.5. (i) The licence conditions of UASL/CMSP should be suitably amended to allow active infrastructure sharing limited to antenna, feeder cable, Node B, Radio Access network (RAN) and transmission system only. Sharing of the allocated spectrum is not permitted."

On 1 April 2008 the DoT issued guidelines allowing the sharing of active infrastructure between service providers, expressly prohibiting the sharing of allocated spectrum. Thereafter on 12 June 2008 an Order was issued by the DoT amending the UASL and permitting mutual commercial agreements between telecom companies for the purposes of intra-service area roaming facilities, effectively allowing spectrum sharing.

In view of the aforesaid Order, on 15 July 2008 TRAI through the letter of its Chairman, Shri Nripendra Misra, made certain recommendations to the DoT which are worthy of note. The TRAI *inter alia* made its displeasure known that the terms of the UAS licenses had been amended without seeking TRAI recommendations in this regard (in violation of Section 11(1)(a)(ii) of the TRAI Act, 1997 and should not be used to dilute roll-out obligations.

Despite the TRAI's fears that roll out conditions would not be met or would be avoided through the infrastructure sharing route, DoT modified the terms of the VAS licenses to permit the same and thereafter failed to heed TRAI's warnings regarding compliance with roll out conditions as mentioned in TRAI's letter dated July 15, 2008.

Public sector telecom companies such as BSNL that had invested heavily in infrastructure were thereafter forced by MoCIT to enter into heavily one sided agreements with private sector companies thereby allowing private telecom companies to piggy back on public sector infrastructure to expand their subscriber base while all the while avoiding the necessary investments (mandated through roll out obligations in the UAS licenses).

For instance, the Hon'ble Special Judge, Shri OP Saini, in his Order dated 4 February 2012 notes that *"At other times too, accused, as Union Minister of Communications and Information Technology, had blatantly favoured Swan Telecom (P) Limited. This is evidenced, for example, from a most unusual deal struck between the said company and the state-owned BSNL as follows:—(I) The "intra-circle roaming deal" signed between the company and BSNL on September 13, 2008, was literally silent when it comes to money. According to the MoU, Swan Telecom could use Spectrum, communication towers and the entire network of BSNL free of cost. (II) Though the BSNL management suggested charging 52 paise per call, this clause was mysteriously absent in the MoU, BSNL was forced to sign this deal just 10 days before the sale of Swan's shares to Etisalat. It is not clear why an amount was not specified in the MoU and in the absence of a consideration what is the position of the Agreement entered into between the Company and BSNL. The arrangement helped swell Swan's coffers without the company investing a single rupee."*

It appears that the Hon'ble MoCIT may indeed have forced through this agreement in the face of opposition internally (within the DoT) as well as from BSNL, as is shown from the immediate transfer of senior officials in WPC Wing (Joint Wireless Adviser RJS Kushwaha and Deputy Wireless Adviser D. Jha) for objecting to Swan's proposals to BSNL and DoT.

The Report is entirely silent about how various private companies such as Swan Telecom were permitted to carry out business without fulfilling any actions in public interest (as originally mandated by the UAS licenses) through meeting roll out conditions etc. and that too after having received spectrum at throwaway prices. The arbitrary change in policy to permit sharing of infrastructure, the concomitant commercial agreements sanctioned by the DoT permitting inter-circle roaming, as well as the practical implications thereof have not been examined by the JPC. The JPC has therefore failed to appreciate the full scope of the numerous irregularities and illegalities committed by the Hon'ble MoCIT in its Report.

3.5 Failure to examine the issue of disinvestment of stock in various private telecommunications companies and the role of the Hon'ble MoCIT and the Hon'ble Finance Minister therein:

As mentioned above, Shri A. Raja became the MoCIT on 16 May 2007. It is evident that he began to conspire to assist certain friendly companies through illegal and arbitrary decision making right from this point onwards.

The details of Shri Raja's insistence on using 2001 spectrum prices and modification of FCFS procedure, for the issuance of LOI's in January 2008 despite strong opposition from sections of the bureaucracy (and silent consent of the Hon'ble Prime Minister and Hon'ble Finance Minister) are well documented and also noted above. As also mentioned above, the DoT thereafter allotted spectrum and licenses (including additional spectrum to existing players) in March/April 2008. As mentioned previously, a questionable Order was issued on 22 April 2008 to facilitate mergers of telecom companies.

The Report has in addition to the points noted previously, failed to examine that this Order of 22 April 2008 directly assisted Unitech, apparently one of Shri A. Raja's favoured companies [and that had applied for licenses in different names Unitech Infrastructure, Unitech Builders and

Estates, Aska Projects, Nahan Properties, Hudson Properties, Volga Properties, Adonis Projects and Azare Properties. Later Unitech Group formed eight companies — Unitech Wireless (Tamil Nadu), Unitech Wireless (North), Unitech Wireless (South), Unitech Wireless (Kolkata), Unitech Wireless (Delhi), Unitech Wireless (East), Unitech Wireless (Mumbai), Unitech Wireless (West)], to merge all their licenses and helped to waive the mandatory three years lock-in-period in selling of their shares.

Soon thereafter, in September-October 2008, Swan Telecom, another of Shri A. Raja's favourite companies (which had applied for and been a beneficiary of the irregularly distributed licenses and spectrum) offloaded 45 per cent of its shares to UAE based Etisalat for Rs. 4500 cr. (note that Swan had bought its license for Rs. 1530 cr.). Unitech meanwhile offloaded 60 per cent of its shares to Norway based Telenor for Rs. 6200 cr. (Unitech received its license for Rs. 1621 cr.). These "sale's" were disguised in the form of mergers [for instance of Swan Telecom (P) Limited and Etisalat].

As per Shri Raja, the Finance Minister P. Chidambaram was fully aware of the controversial sale of equity of Swan and Unitech to foreign companies.

In his letter to the Telecom Secretary dated 5 November 2008, Shri A. Raja states:

"Since some misleading articles either out of lack of knowledge or vested motivation, are written in the media about the issuance of new licenses and spectrum allocation more specifically in case of M/s Swan Telecom and M/s Unitech Telecom as these companies allegedly got unlawful enrichment, the matter was discussed with Hon'ble Prime Minister and Hon'ble Finance Minister as I observed in a press conference at Chennai.....In the meeting Hon'ble Finance Minister clarified that dilution of shares to attract foreign investment for business expansion did not amount to sale of license and as such these companies did their share as per the corporate law."

To be noted that the consent of the Finance Ministry was required for the selling of shares to Etisalat and Telenor. Though the Finance Minister was fully aware that this was a sale disguised as a merger, he still permitted this to happen, thereby violating his own recommendation, in his letter to the Prime Minister dated 15 January 2008, that if sale of license or spectrum took place, then the Government must also get its share.

The Report has failed to examine this aspect of the matter and appropriately assign responsibility for this failure of the Government to prevent arbitrary and *mala fide* manipulation of policies to permit windfall gains to private parties.

3.6 The role of the Hon'ble Prime Minister and the then Finance Minister in the 2G scam:

3.6.1 The role of the Hon'ble Prime Minister:

It is clear from documents and other evidence on record/available before the Committee that the Hon'ble Prime Minister, Dr. Manmohan Singh, was at the very least aware of the 2G spectrum scam dating all the way back to 2006 when Shri Dayanidhi Maran was the Hon'ble MoCIT and thereafter during the tenure of Shri A. Raja as MoCIT.

The facts showing that the Prime Minister did indeed have knowledge of the misdeeds of Shri A. Raja in particular may be summarized under three broad headings:

- (i) The Prime Minister knew of the TRAI Recommendations dated August 28, 2007, and of the cherry-picking of recommendations by Shri A. Raja, which permitted a mangling of extant spectrum allocation, licensing and merger and acquisition policies and allowed windfall gain to private telecom companies;

- (ii) The Prime Minister was kept informed of each illegality committed by Shri A. Raja (and as recognized in the Report) in the allocation of the numerous UASL and dual technology licenses in the period 2007-2008 but failed to take action to prevent the scam (part of which could in fact have been remedied even post the issuance of Lols in January 2008);
- (iii) The Prime Minister was aware of and consented to the change in terms of reference of the Group of Ministers constituted in 2006 (upon the insistence of Shri Dayanidhi Maran, the then MoCIT).

As mentioned previously, TRAI submitted its Recommendations on capping of access service providers, continuation of First Come First Serve policy with retention of lock-in and roll out obligations etc., on 28 August 2007. The Recommendations were modified by the Hon'ble MoCIT Shri A. Raja (as detailed previously) and announced *via* DoT Press Release dated October 19, 2007. The fact that the Recommendations of TRAI were not followed holistically or in spirit is clear from the letter of the Chairman of TRAI dated October 19, 2007.

It is clear that the Prime Minister was well aware of the contents of the TRAI Recommendations and was aware that the appropriate method of dealing with spectrum was to ensure it was indexed/auctioned appropriately. This is further proved by the Prime Minister's letter of 2nd November 2007.

The documents on record also clearly show that Shri A. Raja informed the Prime Minister of all his actions in detail. There is no evidence to show (as claimed by the Report in paragraph 10.45 thereof) that the Prime Minister was misled or not informed of the decisions of Shri A. Raja. The procedure followed by Shri A. Raja for allocation of the licenses in the period 2007-08 was exactly as he informed the Prime Minister in writing.

In this context it is useful to refer to the correspondence exchanged between the Prime Minister and the Hon'ble MoCIT, Shri A. Raja.

On 2 November 2007, Shri A. Raja wrote to Prime Minister, informing him:

- (i) That the DoT is following TRAI's recommendations on no cap on service providers.
- (ii) That 575 applications have been received till 01 October 2007.
- (iii) That the Law Minister has rejected DoT's demand for a legal opinion and instead directed them to an EGoM. This *"suggestion of the Law Ministry is totally out of context."*
- (iv) That the DoT will follow the First Come, First Served (FCFS) process.
- (v) That cut-off date will be moved up from 01 October 2007 to 25 September 2007.
- (vi) That procedure for processing remaining applications will be decided later if any spectrum is left.
- (vii) That the DoT is not deviating from existing procedure.

On 2 November 2007 the Prime Minister wrote back, cautioning Shri A. Raja and directing him to:

- (i) Examine issues relating to allocation of GSM spectrum to CDMA operators, enhancement of subscriber-linked criteria and processing of large number of applications received for fresh licenses against the backdrop of inadequate spectrum to cater to overall demand.

- (ii) He reminded him of the TRAI's recommendations that require an early decision and summarized the key issues in an 'annexed note', seeking urgent consideration of the Minister to ensure fairness and transparency and most importantly directing him to let him know of the position "*before any further action is taken*".

On 2 November 2007 Shri A. Raja wrote a second letter in response to the Prime Minister's letter stating:

- (i) The issue of auction was considered by TRAI and the Telecom Commission and has not been recommended.
- (ii) It will be unfair, discriminatory, arbitrary and capricious to auction spectrum to new applicants.
- (iii) Only 60-65 MHz of spectrum is left. 30-40 MHz has been allocated. Therefore, there is enough scope for allotment of spectrum to a few operators after meeting the needs of existing operators and licensees.

On 26 December 2007, Shri A. Raja *vide* a letter of the same date informed the PM about the following:

- (i) That he was going to follow *modified* First Come, First Serve process.
- (ii) That he'd had a discussion with the then head of GoM on spectrum, Shri Pranab Mukherjee, as well as an agreement with the Solicitor General of India, Shri Ghulam Vahanvati.
- (iii) That Tatas would also be given spectrum under dual technology as per existing policy.
- (iv) That he was going to proceed immediately.

This letter was acknowledged by the Prime Minister on 03 January 2008.

From the narration of facts presented above, it is clear that the Hon'ble Prime Minister was aware of and through his inaction directly contributed to the actions of the Hon'ble MoCIT, Shri A. Raja — which actions are documented and condemned in the Report. The Report merely assigns responsibility to the Hon'ble MoCIT and completely exonerates the Prime Minister from his responsibility in the matter.

The Prime Minister is therefore complicit in the advancement of cut-off date, rejection of the Law Minister's request to refer the matter to an EGoM, refusal to submit to auctions, and pretence of implementing the TRAI's no cap recommendation while knowing full well that there is not enough spectrum available to accommodate 575 applications. These facts have been completely brushed under the carpet by the Report.

The fact that the Hon'ble Prime Minister knew about the illegal acts of the Hon'ble MoCIT, Shri A. Raja is clear from the following:

- (i) Illegal advancement of cut-off date — *vide* Shri A. Raja's letter to the Prime Minister dated 2nd November 2007.
- (ii) Refusal to send the matter to an EGoM — as recommended by the Minister of Law and Justice *vide* Shri A. Raja's letter dated 2nd November 2007.
- (iii) Claiming to follow no cap but in fact, only processing a few of the 575 applications received (in violation of the TRAI Act) *vide* Shri A. Raja's letter to the Prime Minister dated 2nd November 2007.

- (iv) Refusing auctions as an option — the second letter of 2nd November 2007 from Shri A. Raja to the Prime Minister.
- (v) Manipulation of the FCFS from 'date of application' to 'date of compliance of Lol/ date of payment' — letter of Shri A. Raja to the Prime Minister on 26th December 2007.

Further, as is recognized by the Report (paragraph 6.56) Shri Pulok Chatterjee, the then Secretary in the Prime Minister's Office submitted a note to the Prime Minister on spectrum related issues on December 31, 2007 viz. before the Lol's were issued by Shri A. Raja in January 2008. Thereafter, a comprehensive note was submitted by Shri Pulok Chatterjee on January 6, 2008 suggesting norms and methodology to be adopted by the DoT on spectrum related issues.

On January 9, 2008, the Additional Secretary (Economic Affairs) wrote a concept paper on revising entry fee and auctioning spectrum.

It was only after all of this that on 10 January 2008 UAS licenses were allotted to 121 operators in 2008 at 2001 prices. The Press release(s) in respect of this (first come first served/ Lol processing) was issued on 10 January 2008. It is clear therefore that the Prime Minister could have and indeed should have intervened in what was clearly an arbitrary and *mala fide* exercise of power by the Hon'ble MoCIT (in issuing the mentioned Lols at 2001 rates without carrying out appropriate auction/indexation, and manipulating the first-come-first-served criteria).

Thereafter, on 11th January 2008, the Prime Minister appears to have suggested that the note authored by Shri Pulok Chatterjee be modified taking into account the fact that Lol's have already been issued on 10th January 2008.

Shri Pulok Chatterjee thereafter prepared a fresh Note on 15 January 2008, reiterating the points in his 6th January Note.

At this time, only Lol's had been placed so the Government could still cancel the Lol's or change the entry fee. The UAS licenses were signed between February 27th and March 7th 2008, after which entry prices could not be changed without legal consequences.

These aforesaid narration of facts and documentation, clearly indicate that the Prime Minister's Office and by implication, the Prime Minister were well aware of the proper way to go about allocation of spectrum which was contrary to the position taken by Shri A. Raja (and disclosed to the Prime Minister) and yet failed to take any action to stop the arbitrary and illegal issuance of LOIs and spectrum in 2008. In fact the documentation clearly shows that the conditions pertaining to issues such as entry fee etc. could have been modified in accordance with the proper procedure (auction) till such time as the Lols were converted into the final licenses.

It is clear from the documents and evidence on record that Shri A. Raja informed the Prime Minister of all the illegal acts that he was committing and did so in writing directly to the Prime Minister and in advance of the scam of 10th January 2008 as shown by the two letters dated 2nd November 2007 and 26th December 2007. Shri A. Raja did exactly as he told the Prime Minister — he illegally advanced the cut off date, he changed the definition of FCFS, and he only processed a handful of applications by shunning auctions and giving away spectrum in 2008 at 2001 prices. The press releases of 10th January, 2008 are exactly consistent with Shri A. Raja's letters of 2nd November 2007 and 26th December 2007. Further, the Prime Minister was well aware of the need to revise the prices for spectrum allocation but took no steps to ensure that appropriate policy mechanisms were followed.

The letters of 11th January 2008 and 15th June 2008 (Annexure-XLII) noting show that the Prime Minister knew about the scam and wanted to distance himself from the matter. As recorded in paragraph 6.56 of the Report a noting in the Prime Minister's office file dated January 23, 2008 indicated that the "PM wants this informally shared with the Deptt. Does not want a formal communication and wants PMO to be at arms length pl." (in reference to the note prepared by Shri Pulok Chatterjee dated January, 15, 2008). It is clear therefore that the Prime Minister despite being aware of the problems with the procedures followed by the DoT as well as the correct method of going about the allocation of UAS licenses failed to take any action (including as recommended by various officials of the Government of India including in the Prime Minister's Office such as Shri Pulok Chatterjee).

In addition, there is also evidence that the Prime Minister had, after discussions with Shri Dayanidhi Maran in January/February 2006, instructed the Cabinet Secretary to issue a Terms of Reference on 23rd February 2006 — which included spectrum pricing. Further, Shri Dayanidhi Maran, flatly refused to accept the ToRs, submitted two drafts (28 February 06 and 16 November 2006), and modified the Terms of Reference after 'the Prime Minister's approval' — as has been stated in the new Terms of Reference dated 07 December 2006.

3.6.2 The role of the Hon'ble Finance Minister:

Shri P. Chidambaram, the then Hon'ble Finance Minister, was fully aware that the price at which 2G spectrum, linked with UAS licenses, being sold at 2001 prices was a gross undervaluation. Evidence that he wanted the price to be revised is available at multiple points throughout the 2G spectrum scam. As per Cabinet decision of 2003, the FM and MoCIT had to agree on the license fee/spectrum price as it has revenue implications.

In this context it is also worth noting the Order of the Special Judge, CBI, Shri OP Saini, dated 4 February 2012 (Annexure-XLV) wherein the Hon'ble Court has noted that "*In the end, Mr. P. Chidambaram was party to only two decisions, that is, keeping the spectrum prices at 2001 level and dilution of equity by two companies. These two acts are not per se criminal.*" It may be noted that the JPC's task is to examine the political responsibility for the 2G scam. While Shri P Chidambaram may not be party to a criminal conspiracy, he was a party to the decisions that resulted in a huge loss to the state exchequer and windfall profits to a few select parties. The aforesaid decision merely clarifies that while Shri P. Chidambaram had a direct role in ensuring that spectrum was sold at artificially low rates to certain companies, whose shareholding was subsequently diluted leading to considerable and unwarranted private gain, he did not do so as part of a criminal conspiracy.

Evidence of Shri P. Chidambaram's knowledge of 2G spectrum being undervalued and that it should be auctioned/indexed higher is as follows:

- (i) Chidambaram was a member of the GoM wherein in Shri D. Maran's time itself, the ToRs were changed from 22nd February 2006 to 7th December 2006 by removing spectrum pricing as a listed part of the ToRs for GoM on spectrum. This was clearly done in full view of the members who were on the GoM which included Shri P. Chidambaram.
- (ii) The Finance Secretary, Dr. Subbarao's letter to D.S. Mathur, Secretary, DoT dated 6th June 2007, asking DoT to reconsider, including spectrum pricing, the ToRs for the GoM on spectrum headed by Shri Pranab Mukherjee. D.S. Mathur, refused to do so under MoCIT's instructions in a letter dated 15th June 2007.
- (iii) On 20th November 2007, the Finance Secretary, Dr. Subbarao wrote a second letter, this time firmly objecting to giving away spectrum in 2007 at Rs. 1600 crores determined

as far back as 2001 without any indexation, let alone current valuation. It also asked for any further action to award licenses may be stayed. While the letter mentioned dual technology or cross over licenses, it obviously also applied to all new licenses being given at 2001 prices. The Secretary, DoT, DS Mathur refused to increase or index the price of 2G spectrum citing Cabinet decision of 2003.

- (iv) Additional Secretary (Economic Affairs) put up on 9th January 2008 a comprehensive note on spectrum allocation and licensing price. It recommended a revision of the entry fee (fixed in 2003 based on price discovered in 2001).
- (v) The above position paper was used by the Finance Minister, Shri P. Chidambaram as the basis of his note of 15th January, 2008 to the Prime Minister where auction was recommended for future allocation of spectrum (beyond the start-up spectrum, with the spectrum allocation in the past to be treated as a closed chapter. This means that Finance Minister was now agreeing to the undervaluation of the license and spectrum that MoCIT had done by virtue of Lol's being issued on 10th January 2008.
- (vi) A full telecom meeting took place on 15th January, 2008. MoF representative who attended the meeting did not raise the issue of revision in entry fee.
- (vii) A meeting was held between the Finance Minister and the Minister of Communications and Information and Technology on 30 January, 2008. The gist of discussion of the meeting as recorded by the Finance Secretary on 30 January 2008 makes clear that FM said that for now we are not seeking to revisit the current regimes for entry fee or for revenue share (Annexure III).
- (viii) As DoT had awarded only Lol's on 10th January, 2008, it was possible for FM not to agree to action of DoT. Without his consent, the undervaluation of the license and spectrum fees could not have happened. He could have expressed his disagreement with MoCIT and as per Business Rules of the Government, raised it to the Cabinet for a resolution of their differences. Till the Lol's are converted into licenses, no equities had yet been created and the Government had the option to cancel the Lol's. The conditions pertaining to issues such as entry fee etc. could have been modified in accordance with the proper procedure till such time as the Lols were converted into the final licenses.
- (ix) By agreeing to treat the award of Lol's and the consequent undervaluation of the license and spectrum fees as a closed chapter, the FM in effect acquiesced in the scam being perpetrated by Shri A. Raja, the then MoCIT.
- (x) At this stage, the FM was well aware that there was a possibility of companies that had secured the licenses and spectrum at throwaway prices, could sell the same. Both in the Note to the PM and in the discussions with MoCIT on 30th January, 2008 the issue of sale of license or spectrum are discussed. Yet Shri P. Chidambaram, the then FM took no step to stop the sale of shares of Unitech and Swan to Telenor and Etisalat.
- (xi) Further, the FM was well aware of the need to revise the prices for spectrum allocation but took no steps to ensure that appropriate policy mechanisms were followed, and thus failed in his duty to protect the revenues of the Government.

Further, it may be kept in mind (as mentioned above) that despite the LOIs having been illegally allocated in January 2008, the Finance Minister was likely aware, being one of the most eminent lawyers of the country, that the Lol's could be cancelled before the formal grant of licenses. Yet, he failed to take any action in this respect.

In addition the aforesaid, it was the duty of the Hon'ble Finance Minister to ensure that his Ministry provided an input into the pricing of spectrum given the financial and revenue implications for the government of India. The Report glosses over the fact that no such formal consent was obtained from the Finance Ministry for fixing of entry and spectrum fees at 2001 levels in 2008. The question however remains as to why the Hon'ble Finance Minister did not push for adherence to the Government of India (Transaction of Business) Rule-4, which makes concurrence between the relevant ministries mandatory (regardless of any Cabinet note). The Hon'ble Finance Minister could and ought to have invoked the Government of India (Transaction of Business) Rule-7, which specifies in the second schedule that in cases which involve financial implications on which the Finance Minister desires a decision of the Cabinet and if a difference of opinion arises between two or more ministries and a Cabinet decision is desired, the matter shall be brought before the Cabinet. There is therefore clearly a dereliction of duty by the Hon'ble Finance Minister.

The Hon'ble Finance Minister was also aware that the sale of Swan and Unitech Shareholding following the allocation of spectrum would result in windfall gains to private parties (as also cautions by the TRAI's recommendations of 28 August 2007 and his own Note to the Prime Minister dated 15 January 2008). The fact that the Finance Minister failed to recommend revisiting the entry fees even in his letter of 15 January 2008 and meeting with the MoCIT on 30 January 2008, despite being aware that the auction route was the most equitable method of spectrum allocation also deserves to be examined in detail.

The Hon'ble Finance Minister also failed to exercise due diligence and protect the interests of the public in failing to stop the provision of loans and other financial assistance to companies that were found ineligible for award of licenses. Essentially, through his oversight/negligence, the Finance Minister permitted companies with virtually no paid up share capital and minimum worth to raise huge loans from public sector banks on the back of merely the award letters (of LoI)—in fact in instances such as that of Swan, loans were fully disbursed prior to license/spectrum being allocated.

It is public knowledge that public sector banks liberally funded many telecom companies involved in the 2G scam even when the CBI was probing criminal conspiracy in allotment of licenses to these firms. Records available at the Registrar of Companies show that public sector banks provided loans worth more than Rs. 26,000 crore to 5 companies involved in the 2G scandal. It may be noted that the Department of Telecom is a party to most of these loans — and therefore it raises disturbing questions of how and why these loans were disbursed so eagerly by public sector financial institutions and at what has proved to be at a considerable cost to the exchequer following cancellation of licenses by the Hon'ble Supreme Court. The Report fails to bring out the role of the Hon'ble MoCIT, Shri A. Raja and Hon'ble Finance Minister, Shri P. Chidambaram in assisting companies to secure loans only on the basis of telecom licenses thereby leading to losses to public sector banks.

3.7 Failure to adhere to appropriate Constitutional, Legal and Ethical standards:

The Report has failed to take into account established constitutional and jurisprudential principles in arriving at its conclusions.

The Report has failed to apply the principle of collective responsibility of the Cabinet in arriving at its conclusions and findings. It is settled principle in terms of our constitutional structure that the government follows a cabinet form of governance wherein all are equally responsible for decisions of the government. The principle of collective responsibility can in fact be said to be the hallmark of a cabinet system of government. Given the documentation on record as

well as the principle quoted above, it is clear that the various illegal acts leading to the 2G scam, took place with the full knowledge and under the noses of the entire cabinet, which aspect of the matter the Report has failed to examine.

Further, the Report has failed to understand that an offence can equally be an offence of omission as opposed to an offence of commission. This principle is of particular importance where officials holding high positions in the government are involved as their duties and responsibilities lie largely in ensuring that appropriate policy is formulated and implemented — in accordance with administrative norms, due process, within the bounds of the law and the ultimately any government decision is made with the interests of the public in mind.

The Report is scathing in its comments on the Hon'ble MoCIT, Shri A. Raja who indeed carried out numerous illegal acts of commission but fails to examine why, despite having knowledge of the appropriate method of allocating spectrum/licenses, the Prime Minister failed to take any concrete steps to either stop the issuance of the Lols in January 2008 or even thereafter failed to take remedial measures in the period before the licenses were actually signed. It is made clear from the letter of the Hon'ble Finance Minister to the Prime Minister dated 25 March 2011 that the option of cancelling the Lols to allow for proper license terms and conditions to be inserted (and to remedy the issue of fees charged) was very much possible, even after the Lol's had been issued and before the signing of the agreements. Nonetheless, the Hon'ble Prime Minister failed to take any action, despite being made aware of the need to index/carry out an auction as is made clear from the facts narrated previously. The fact that the Prime Minister was well aware of the illegal actions of the Hon'ble MoCIT, Shri A. Raja is also clear from the record (and as explained hereinabove)—yet he failed to take any preventive or curative action—thereby committing an offence of omission. A similar case can be made out for the Hon'ble Finance Minister.

In addition to the above, it must be kept in mind that the role of the JPC is not to function as a court or judicial authority in assigning criminal responsibility. The role of the JPC is to assign political responsibility and check that policy decisions are taken in accordance with due procedure and keeping in mind the nations/publics interests. It must be kept in mind that the threshold of proof required before the JPC is not necessarily the same as in a criminal inquiry where there must be proof of commission of a crime, beyond reasonable doubt — there is no similar evidentiary principle applicable to the JPC. The JPC therefore cannot use the fact that there is or was a criminal trial or inquiry as a reason to not examine a matter to its fullest ability. Similarly, for civil actions (such as PILs), it may be noted that civil courts are excluded from examining/commenting on matters of policy — which the JPC can and is required to do in terms of its mandate.

Sd/-
(SITARAM YECHURI)

MINUTE OF DISSENT

—Shri Gurudas Das Gupta, MP

PREFACE

It is an inescapable fact that the draft circulated has been prepared after cherry picking the facts from bags full of documents collected and evidence placed before the Committee #*** Nevertheless, the other members would be failing in their duty before the Nation and the Parliament if they do not place incontrovertible facts that are available in documents placed before the committee and evidences rendered by those who appeared before us.

In the light of our bounden duty, as elected representatives of the public, we need to place the following facts for the Parliament and Nation at large to judge for themselves the travesty of justice and the blatant attempts to whitewash the inadequacies and wrongdoing of people who have belayed the trust placed in them by the public.

I propose to briefly enumerate these facts on the main issues:

1. If the PM was misled why is it that the PMO made detailed examination of the letter written by Mr. Raja about his intent? How is it that the Secretary to the PM and the Pr. Secy. to the PM recorded copious notes on the 6th and 7th Jan. 2008 only days short of issue of licenses 'in bulk' by Mr. Raja? (copy enclosed). Mr. Raja had made his intent clear. Why did the PM not stop him from issuing the Lol's on 10th Jan. 2008 in almost a scandalous manner? Or even if they were issued, they were merely Lol's. The licenses following these could have been withheld. It is a clear case of shirking responsibility, if not connivance, on the part of the PM/PMO.
2. After being made aware of the decision taken by Mr. Raja by his officers, how can the PM state that he wanted an "arms length approach" from the decision? Is he not the Prime Minister and thus the head of the Cabinet? At this point, when PMO was grappling with the suggested course of policy to be adopted, how could the PM hide behind the scene? If this is not a clear case of abdication of responsibility then which is? The PM cannot absolve himself of this inaction.
3. PM ignored his Cabinet Secretary's views and took no action. If Cabinet Secretary was not questioned in JPC, the note submitted by the head of bureaucracy would have just remained where it was! Again PM's inaction. Finance Secretary, Subbarao has been quoted at several places in the Report. I do not recollect that he said that the Government embarked upon a well considered policy of distributing spectrum after having examined the benefits likely to accrue from such low pricing. Where are those documents? Where has this Government examined pros and cons of continuing with market determined price of 2001 and decided through its cabinet to continue with it. If it was so, perhaps CAG would not have questioned it.
4. The most disturbing part of the Report is that it cherry picks from the statements of R.P. Singh, a retired functionary of Indian Audit and Accounts Department to rebut the Report submitted by the Comptroller and Auditor General, an authority appointed

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by the Constitution. R.P. Singh's personal statements or opinion have been given the centre stage to set aside the Report prepared by the CAG with the help of his office. R.P. Singh is an individual who signs a Report without inking any doubts before signing it, makes a presentation of the same before the PAC and suddenly on retirement, resiles from it. Instead of moving a privilege issue against him the#*** *** *** Now let us examine the credibility of this officer in the light of hard facts;

5. R.P. Singh in para 7.34 has been quoted to say "I was said to calculate loss on the basis of presumption. So far I have not come across in my entire career. Calculating losses on the basis of presumptions; a lot of subjectivity is involved in that." What the draft JPC report does not mention, as was brought on record, is that R.P. Singh in his own report as OG (P&T) in Union Government (Commercial) Report of 2011-12 states while commenting on BSNL on page 62 para 5.2.2.1 (copy enclosed)

"Losses of Revenue due to under utilization of Rural Broadband equipped capacity— This led to a potential loss of Rs. 11.17 crore per year on circles test checked based on the tariff of Rs. 99 per broadband connection."

He goes on to state on page 63 of the same report viz. Para 5.2.4. (copy enclosed). "Potential loss of Revenue".

Please also note that in the report on the 2G Spectrum allocation page (ix) table and also on 52, 54 and 56, uses the same expression "potential loss". CAG had placed several examples before the Committee that CAG's Reports do mention potential, likely or incurred losses which they come across in the course of their audit because it is the duty of Audit everywhere. #*** *** ***

When he stated in the JPC (as quoted above), "So far I have not come across in my entire career" (calculation of loss), how untrue and misleading he was. #***

6. I would place yet another example of how the JPC let him off without proceeding for privilege against him. In para 10.54 it is stated that R.P. Singh insisted that he did not recommend using 3G prices for calculating 2G values. In fact he did use 3G prices to calculate loss. In his Report of 31st May, 2010 he used the 3G auction rates to arrive at the figure of Rs. 36000 crores for spectrum beyond 4.4 Mhz. How can the JPC be seen to rely on his statement with so much of credibility unless there is an underlying agenda to scuttle CAG's Report.
7. In para 10.56 the draft report mentions that C&AG conceded that there was neither any TRAI recommendation nor cabinet decision to go in for auction of 2G spectrum though there were references regarding the need for revision of license fee and spectrum charge from the PMO and MOF and that these suggestions do not enjoy a mandate unless they are transformed into decisions. **That is indeed the moot point.** Suggestions of PM and Minister for Finance were ignored. Law ministry suggestions to convene GoM/Cabinet meetings to consider spectrum pricing were ignored by the Minister. The JPC cannot be seen to be validating these actions of the Minister of DoT when on the other hand we are saying that procedures were bypassed by him. The JPC cannot be seen to be contradicting itself. If there was a policy in place (with everyone's consent) where was the need for minister to bypass and violate procedures and for others to debate on it?
8. In fact I had categorically written earlier that Government's policy was to give telecom licenses with bundled spectrum through competition, may be by bidding, which is also one form of auction as it has an element of market discovery of price or value. How can you distribute limited amount of spectrum to all without a sound policy of competition? Where was the policy? There was no policy. It was still being debated.

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Otherwise why PMO was busy giving options, views of External Affairs Minister were being taken and PM wanted to be at arms length?

9. In para 10.57 on page 310 it is made out as if the DG (P & T) was forced into calculating losses by the CAG Hqs. No. How conveniently draft Report keeps quoting selectively from R.P. Singh's declarations ignoring all logic contained in the documents furnished by CAG Office and painstakingly explained by CAG on four days when he deposed before us. It is abundantly clear that R.P. Singh has been used as a pawn to kill the serious issues of failure of governance and misappropriation of national resources raised in CAG's Report.
10. It is now quite clear from various sources that the PAC in its suo motu examination strongly opined that calculation should take into account gains made by the different companies who got FDI by diluting equity after having got licenses. In fact a PAC member had calculated and told the then Finance Secretary deposing in the PAC, that the gains to the companies on this account would be nearly Rs. 70,000 cr. On the arguments of untenability of this method by R.P. Singh, CAG documents has mentioned that they had not questioned the legality of the transaction but used the extent of capital infusion as an indicator to assess the value commanded by the seekers of spectrum to run the business.
11. In para 10.59 on page 312, it is mentioned that it is "astonishing" that after presenting three models Audit goes on to conclude the wide range of loss to Govt. In fact all audit Reports talk of "potential loss or Revenue forgone". All reports of the C&AG on Revenue talk of Revenue lost. Enough evidence was produced by C&AG to show that such Revenue is then recouped by Dep. of Revenue. This is nothing new. There is nothing astonishing. The loss is there due to market determined entry fee being applied seven years later despite telecom boom. This is a real loss, even CAG has not called it presumptive. **How much** is the loss is worked out on presumption because the process to assess market's valuation was not applied.
12. The Audit has been very fair in stating that the amount of loss can be debated. That is exactly what we are doing. The Cabinet Secretary sent a letter to PM stating that Revenue forgone would be Rs. 36000 cr. The CBI have pegged the loss to Rs. 30000 cr. Both these parties appeared and gave evidence before the JPC and the draft report conveniently omits to mention these figures.
13. The draft report painstakingly mentions that the loss during the NDA tenure was Rs. 42080 cr. Does it mean that the entire JPC accept that there was no loss to Govt. in the allocation of the 2G licences and that loss occurred only during the NDA regime?

Conspiracy of DoT during 2007 and 2008: The facts JPC left ignored

As the telecom sector had begun to look up with increasing tele density, the corporates realising the potentiality of the sector moved into to invest in telecom anticipating high profit. Between 2004 and March 2007, 53 applications were put up. But the Department deliberately kept the applications pending in violation of the earlier practice, of expeditious disposal. This was done to generate artificial demand to seek and make illegal gains. Seen in the background of change of terms of reference to the Group of Ministers, GoM due to the persistent pressure of the Ministry of Telecommunications to grab absolute authority for fixing spectrum price, the move to keep applications piled up sets the clear what DoT was really working for.

The change of ToR giving exclusive right to DoT to decide the price of spectrum violated the Cabinet decision of 2003 that clearly provided equal status to Ministry of Finance in this regard. It also violated the age old government rule that in all cases of financial implications, Ministry of Finance has to be involved.

The Government, particularly the Prime Minister, buckled under the pressure of Mr. Maran, the then Minister of Telecommunications to keep his Government safe.

The delay in processing applications with TRAI refusing to put a cap on the number cellular operators exposed beyond a grain of doubt what the Department of Telecommunications under the leadership of Raja was heading for.

The illicit intention of the DoT is further exposed when it asked for the applications for licences on 24th September, 2007, the time limit being up to 1st October, 2007. The short window set for the submission of applications pinpoint to the long intention of Mr. Raja for committing subversion of all governmental rules and norms.

Even after deliberate introduction of short window time, nearly 400 new applications were received. It piled up to 575 indicating clearly how lucrative the telecom sector looked to the corporates looking for profits. The criminality of Mr. Raja is further exposed, suddenly and most arbitrarily, Mr. Raja advanced the cut off date to 25th September, 2007, only one day after the press release inviting applications. More illegality, Mr. Raja advanced the date with an ulterior motive to favour his favourite corporates. Further the decision to advance the cut-off date was intimated publicly only on the day the letter of intent was issued, 10th January, 2008.

Out of 575 applicants, 78 applicants complied with the terms and conditions of the LOI on the same day itself. The change in the manner FCFS was implemented resulted in a scenario where the applicant companies rushed to make payments to comply with the LOI conditions. The table below reveals the haste with which applicant companies complied with the terms of the LOIs. Certain companies even had pre dated demand drafts, as also bank guarantees from Mumbai, which was physically impossible given that they had been given only 45 minutes to collect the Lols and respond to it.

It only confirms that the allocation of licences, licences of intent was all prepared much earlier, the list was finalised, the corporates were chosen as per his discretion with the intention of providing undue benefit, the process of processing was merely a show sham mockery.

In order to put the seal of semblance of legality, Mr. Raja subsequent to receiving 575 applications cleverly sought the view of the Ministry of Law and Justice. But it cynically rejected their suggestion for having an empowered committee of Ministers to consider the issue, also their view that Attorney General may be asked to give his opinion.

That Mr. Raja was not alone in the gamble, he, of course, was the principal player playing cards well, most fraudulently obtained the seal of legality with the connivance of the then Solicitor General, the point in question infamous release of January 2010.

Mr. Raja moved ahead despite the repeated protests of the Ministry Finance. Lastly, in October 2007, when it was known to the Ministry of Finance that licences under dual technology was proposed to be provided at the price of 2001, merely at a price of Rs. 1658 crores for a pan India licence, the then Secretary, Mr. Subbarao clearly asked his counterpart in Telecommunications to stay the allocation of licences pending further discussion. Neither DoT agreed with the suggestion of MoF nor MoF moved further to stop the giving away of licences.

In the entire process of allocation of licences, the DoT followed one consistent rule—and that was to ignore every advice to undertake the issue of allocation of 2G licences after discussions or consultations with other Government Departments or agencies. Having pressurized the PMO into allowing it to have the sole right on pricing, the DoT was in no mood to allow anybody else to prevent it from extracting maximum mileage from the allocation of the 2G license. Even though the MoF, a concerned agency sought to retain its role in spectrum pricing, the DoT did not give it an opportunity to do so. Its plea that all further action to implement the dual technology licences was also not heeded by the DoT.

This is again a sordid story of conspiracy, collusion, deceit, fraud after all a violation of all canons of established Government functioning. It is a criminal breach of law. Mr. Maran rolled in motion the game of perpetrating irregularity by claiming all the time that pricing was the exclusive prerogative of the DoT. Shri Raja and all his accomplices further forwarded the illegality by not attending to the applications, artificially popping up the demand, creating a situation where he could play his cards well. The manipulation of dates, without verifying the facts in the application and allowing ineligible people to have access and giving the licence to many of those who were actually real estate businessmen at a price which was abnormally low, he had given benefit to few service providers, allowing them to disinvest without rolling out the service, was all done with a pre determined intention of making illegal gain and doling out illegitimate benefits to private players.

In fact, Mr. Raja had acted as the stooge of the corporates, it is the corporates who had campaigned for his appointment as the Minister of Telecommunications.

Has the country suffered a loss on account of the allocation of 2G licences in 2008 at the rates discovered in 2001? : The Question JPC deliberately overlooked

It is clear that there was no social benefit to be derived by giving spectrum at the price of 2001. It is a matter of no surprise that the Minister of Communications has gone public with a zero loss theory, because the DoT would like to prove that its actions were dictated by a social cause. #*** ***.

One aspect of the entire 2G allocation process which has generated a huge debate and has caught the imagination of the entire nation has been the question of whether the exchequer has suffered a loss on account of the manner in which the 2G licences were allocated. If so, what has been the quantum of loss? Different figures of losses have been propounded by different agencies. In 2007, while the allocation process was underway, media civil society groups and even Members of Parliament had been pegging figures of losses. These ranged from somewhere around Rs. 67000 crore to Rs. 1.90 lakh crore given by certain Members of Parliament.

Subsequently the CAG report, the CBI, the Supreme Court, and even the DOT with its “zero loss theory” all came out with different sets of figures, giving rise to a situation where a “zero loss theory” existed side by side a loss of a couple of lakh crores.

The evidence which emerged during the course of the JPC revealed that there had been a definite loss to the exchequer. Spectrum is a scarce resource, essential for providing cellular services. Companies which wanted to enter the telecom sector needed, necessarily, to acquire spectrum. From 2001 when the last licences had been given out through auction, there had been a huge increase in tele density. Demand had increased, as had the scarcity of spectrum. It was only natural therefore, that the price of spectrum should have reflected the value it had

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in 2008, instead of being given at an artificially fixed price of 2001. The CBI told the JPC during its presentation that one of the reasons that it was that, "The telecom sector had undergone tremendous growth and the parameters like tele density, Adjusted Gross Revenues (AGR) etc. had undergone a phenomenal rise since the year 2001." Shri Subba Rao, Governor RBI and Secretary Finance in 2007 also told the JPC during his interaction with the Committee that as Finance Secretary, he was of the view that the price of spectrum needed to be revised in 2008 and that it would have been inappropriate to give away the licences at rates determined 2001. He told the Committee, "Left to myself, if I was the final authority to decide on this, I would have tried to rediscover the prices in 2007-08 and would have tried to give at that prices.

The Cellular Association of India (COAI) members who had appeared before the Committee also spoke of the fact that the price of spectrum needed to reflect its value, stating, "... we have time and again advocated for an open transparent method allocating a limited scarce resource like spectrum. Auction is one of them."

The Ministry of finance, the custodian of the country's finances was of the strong view that the price needed to be revised to reflect the actual value of the spectrum. There can be no doubt, therefore, that the price of spectrum needed to be revised in 2008 and that allocating spectrum, the demand for which had increased substantially, at the old rate of 2001 was highly inappropriate.

When one looks at the DoT's actions, it only reinforces the belief that the price of spectrum would have increased substantially, had the price been allowed to be revised in 2007-08. The DOT's insistence on demanding to be the single agency to decide on the price of spectrum makes it clear that the DoT was aware that had the Ministry of Finance been allowed to participate in the decision making process, the DoT would have been prevented from giving out spectrum at the old rates of 2001. The real estate operators who sought to enter the fray in spite of being ineligible to enter the business of telecom, were willing to risk violating laws because they were assured of windfall profits once they acquired scarce spectrum at such low rates.

Different figures of losses have been thrown up during the course of the entire process of 2G allocation. The CAG report has given a detailed set of figures, giving different possible sets of losses to indicate the under pricing of spectrum. One of these indicators was the price offered by a telecom company, STel, who offered to pay Rs. 13752 crore for an all India licence. On this basis the value of spectrum in 2007-08 has been worked out by the CAG at Rs. 65,909 crore.

The CAG report attempted a valuation of the 2G spectrum given in 2008 by comparing it with the price 3G spectrum fetched when it was auctioned in 2010. The CAG report presented a figure of Rs. 1.76 lakh crore, with Rs. 1 lakh crore being the amount which could have possibly been generated from the 122 licences and Rs. 35,000 each being the amount which could have been generated from the 35 Dual Technology licences and the extra spectrum given out.

The third indicator that the CAG report used was the profits made by the real estate operators. These real estate companies had diluted their equity within a couple of months of acquiring the spectrum and what is particularly to be noted is that fact that the companies which acquired the stakes in these real estate firms were all big international telecom players. Using the value that the international telecom giants pegged for the spectrum, the CAG report gave a third set of figures which gave the possible value of spectrum at between Rs. 57,000 to Rs. 69,000 crore.

The CAG's report itself clearly states that these figures are merely indicative and that the actual value of spectrum could only have been discovered had it been allowed to be discovered through a market mechanism. But by not allowing a market discovered process to take place, the DOT ensured that the entire due process was vitiated and that spectrum was under priced and given away.

The CBI, in its charge sheet gave another set of figures, calculating loss to the tune of Rs. 22,000 crores for 122 licences. The CBI also used the dilution of equity as an indicator.

The Supreme Court, in its judgment cancelling the licences also observed that there had been substantial loss to the exchequer on account of the manner in which the 122 licences were distributed.

The most emphatic avowal of the value of spectrum emerged not from any Constitutional or external agencies, but from the highest centre of the Government itself. In November 2007 the Prime Minister sought an assessment of the entire 2G issue, which was drawing immense media attention, from the Cabinet Secretary, the senior most bureaucrat in the country. The Cabinet Secretary responded to the Prime Minister on 4th December 2007, well before the licences were given away on 10th January 2008. The note given by the Cabinet Secretary had never been available in the public domain and came to public notice only when, in response to my questions during the course of his interaction with the JPC, Shri Chandrashekhar stated that he had sent a note to the Prime Minister on the issue and that he had calculated the value of the spectrum. In this note Shri Chandrashekhar wrote, "When I last met the Hon'ble Prime Minister on 26th November 2007, he had directed me to send him a note on the revenue issues relating to spectrum allocation. A note is enclosed herewith for kind perusal of PM." In his note Shri Chandrashekhar wrote:

There is a strong case for enhancing the licence fee, on the following grounds:

All asset prices have increased substantially over the last six years, with inflation being about 34%. In the case of spectrum, the quantum allocated has increased by around 40% over this period, while teledensity has become $5^{1/2}$ times. On this basis, the value of Rs. 1650 crore paid in 2001 becomes $(1,650 \times 1.34 \times 5^{1/2}/1.4 =)$ Rs. 8,700 crore, i.e. about Rs. 7,000 crore higher.

The fact the market considers this asset under-priced is confirmed by the long queue for fresh licences, the alacrity with which Reliance and two other firms paid up the fee on being allowed to do so (within a few hours). The rapid expansion of consumer base during this period has effectively taken the risk out of this business There is, therefore, there is no justification for retaining licence fee at the earlier rates on the ground of 'level playing field' between new licensees and incumbents.

The crux of the matter however, remains that different agencies which looked at the issue of allocation of 2G licences from different angles all arrived at the conclusion that the country had suffered a loss. It is immaterial whether the quantum of loss was Rs. 30,000 or Rs. 1.76 lakh crore. What matters is that the country lost an opportunity to earn and fill the coffers, particularly at a time when it was facing severe financial constraints. The nation lost, the corporate reaped the profits.

There is no doubt about the fact that that DoT perpetrated illegalities in 2007-08 to benefit certain corporates. There have been deliberate attempts however, to justify the DoOT's actions as an forethought strategy, in line with Government's past policy and aimed towards a social

objective. One argument that has been advanced to justify the under pricing of spectrum is that it was Government policy to give away spectrum at the price of 2001 and that auction of spectrum could not have been done as it was contrary to Government's policy.

The Government's actions right from the issue of the first cellular licences in 1994 had been based on the premise of a market mechanism. In 1994 it was through a beauty parade model where there was bidding against pre determined parameters, that two operators were introduced in the four Metros.

In 1995 two operators were introduced in the remaining 18 circles through bidding. In 2001 the fourth operators were introduced through a multi stage bidding process.

Basing on the TRAI report, the Government in 2003, after having constituted a task force and GoM, had decided to introduce UAS. TRAI had recommended in para 7.39 of its report, which was approved by the **Cabinet, that new entrants in the sector were to be introduced through a multi stage bidding process as was followed in 2001.**

It is very evident, therefore, that from the very beginning the entry of new operators was through a market mechanism, which was either bidding or auction. The policy of DoT is clearly demonstrated through its actions over the years. Only in 2008 was there a violation of this policy.

Another argument that is being advanced in support of under pricing of spectrum by retaining it at the price of 2001 is that spectrum was being given at low prices with a social purpose. Making cellular phones available at a low price had led to very high tele density and have made cellular phones affordable to even poor people, this is the argument being propounded. This is an absolutely fictitious argument, without an iota of truth. Even if the spectrum was sold at the price depending on the market in 2007-08, the cost of the mobile telephones if at all increased, the impact would have been marginal.

Statistics disprove the argument that the increase in tele density was on account of the licences given in 2008.

The figures provided by the DoT to the JPC, gives the tele density figures over a decade. Tele density figures given by the DoT to JPC show that tele density increased from 7.02% on 31st March 2004 to 26.22 % on 31st March 2008. The licences were given in January 2008, while the spectrum was allocated from April 2008 onwards, The licences given in 2008 would not have any major impact on increasing the tele density and lowering of tariffs. Tele density targets had already reached and exceeded the targets envisaged in the tenth plan. The DoT's claim of seeking to increase tele density and lower tariffs by giving licences at old rates therefore stands demolished in the face of facts. The country had already high tele density. There was no need for low price spectrum to promote tele density.

The possibility is that there would have been no increase, and even if the rates had been increased, it would have been marginal. Shri Subba Rao, former Secretary (Finance) in his deposition told the JPC that it was not necessary that the rates would increase because the corporate would be able to cushion the price rise in their profits.

What could be the reason for DoT allowing the corporate to acquire spectrum at a low cost and reap the benefits if it was not in exchange of hefty kick back? Underpricing has no relation with high tele density, it is devoid of any social bias at all. Tele density had already peaked before licences had been distributed.

Without inflicting much heavy loss to the national exchequer the social objective of the Government of making cellular services available to even the poor of the country could have been done. Firstly the tele density was high well before January 2008. Secondly, that fact that the Indian telecom market had tremendous potential was palpable to corporate within and

outside the country and they were vying with each other to acquire the licences. Finally, even if the price of spectrum had been increased, the cost to the subscriber would have increased marginally only. Therefore, the argument that is being made that Shri Raja did no wrong by allowing the underpricing of spectrum and that his actions had benefitted the country is a totally fallacious one. It is entirely dubious to correlate under pricing with social obligations. It is being done to underplay the criminal conspiracy which had benefitted the corporate, as revealed by the huge profit margins made by the corporate by disinvesting the shares and the price which some of the companies were ready to pay for a licence. It is also a well known truth that the corporate can never offer a huge price if they are not sure of the market returns.

The Role of Prime Minister and PMO: Prime Minister's role in the scam was outrageously left out.

In the entire chain of events that preceded the allocation of the 2G licences, the role of the Prime Minister's Office has been exceedingly important. The one question that has been repeatedly asked is, 'was the PMO aware of what was happening?'. How could the DoT go ahead with its actions?

The CAG in its report on the issue had commented, "Hon'ble Prime Minister's suggestion to reconsider the pricing was ignored". From the records that have emerged during the course of the JPC, it appears that the even the CAG was misled, probably on account of the fact that it was unable to look at the records of the Prime Minister's Office.

Records with the JPC provide a complete picture of the actual events that occurred in the course of the issue of the 2G licences. It has been well documented that the MoF was protesting about the inappropriateness of using prices discovered in 2001 to give away licences in 2008 and wanted the price to be revised to reflect the actual market value of spectrum. The MoF had also sought to involve the Cabinet Secretariat to resolve the issue, but the Cabinet Secretariat had asked the DoT and MoF to mutually arrive at an agreement. The Prime Minister's Office (PMO) had also been receiving a large number of complaints and letters of concern from Members of Parliament, civil society and others regarding the actions of the DoT. Even Cabinet Ministers had written to the Prime Minister expressing concern on the developments in the telecom sector and the need for setting up of a GoM to examine the issues. All the PMO did was to forward all the complaints it received to the DoT, seeking DoT's comments on the same. The person or persons who were meticulously planning to commit the crime were asked to sit in judgement over the complaints that the Prime Minister was receiving. It may also be noted that concern in the public domain was also perceptible.

The ~~*~~facts are enumerated.**

PM's letter to Mr. Raja—2nd November, 2007

That the PM was aware of the course of events that was unfolding in the DoT is clear from the letter he wrote to Mr. Raja. **On 2nd November 2007, the PM wrote to the Minister of Communication & IT, Shri A. Raja stating,** *"A number of issues relating to allocation of spectrum have been raised by telecom sector companies as well as in sections of the media. Broadly these issues relate to enhancement of subscriber linked criteria, permission to CDMA service providers to also provide services on the GSM standard and be eligible for spectrum in the GSM band, and the processing of large number of applications received for fresh licences against the backdrop of inadequate spectrum to cater to overall demand.... I would request you to*

[#]Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

give urgent consideration to the issues beingwith a view to ensuring fairness and transparency and let me know of the position before you take any action in this regard."

Raja writes back to Prime Minister—2 letters on 2nd November, 2007

Responding to the concern of the Prime Minister, Shri. Raja wrote two letters back to the PM on the same day, i.e. 2nd November 2007 itself, justifying the actions of the DoT and seeking to convince the PM that nothing incorrect or illegal was being undertaken by the DoT. He informed the PM that, "*.....there was, and is, no single deviation or departure in the rules and procedures contemplated, in all the decisions taken by my Ministry and as such full transparency is being maintained by my Ministry and I further assure you the same in the future.*"

Letter of Mr. Kamal Nath, the then Commerce Minister to Prime Minister—3rd November, 2007

On 3rd November 2007, the then Minister of Commerce & Industry, Shri Kamal Nath, wrote to the Prime Minister. He wrote, "*I am writing this letter with concern on the sudden and alarming developments in the telecom sector It may be advisable to have a comprehensive look at the issues facing the telecom sector and I would strongly advise for setting up of a GoM.*"

Not only general complaints, letters from Members of Parliament, even a member of his own Cabinet, Mr. Kamal Nath, the then Commerce Minister had sent a letter expressing deep apprehension on the way in which the DoT was moving.

PM wants independent evaluation by PMO

Records from the PMO reveal that the Principal Secretary to PM discussed these issues with Secretary, Telecom and Chairman TRAI on 6th November 2007. It emerged from the discussions that the issues raised were with respect to the recommendations made by TRAI and the difference of opinion between the Minister of Law & Justice and the Minister of Communications & IT.

The Prime Minister, during the course of these events, wanted an independent evaluation of the actions of the DoT. Joint Secretary, PMO, after an evaluation of the facts stated in Shri Raja's letters of 2nd November 2007, put up a note to the PM on 6th November 2007, proposing that in the context of the facts that emerged in the note, it would be appropriate to request the Cabinet Secretary to call for the files and examine the matter in the context of their Transaction of Business Rules, as well as the TRAI Act.

On this note the Principal Secretary to PM noted on 7th November 2007, "PM has seen. Before proceeding with the letter, PM wants a note put up to him in whether the action proposed to be taken by the Ministry is correct or not; whether it is justified in doing what it plans to do."

Another note of Joint Secretary on 7th November, 2007

With reference to the PM's queries, the Joint Secretary, PMO prepared a fresh note on 7th November 2007 itself, addressing the PM's question of whether the DoT's proposed actions were correct or not and whether it was justified in doing what it sought to do. In this note the Joint Secretary noted:

In his letter dated 02.11.2007 addressed to PM, Minister of Communication & IT has stated that the Department intends to ignore the advice to refer the issue of allotment of fresh licences to an Empowered GoM and intends to proceed on first-come-first-served basis, which according

to the minister will be a continuation of the existing policy. This decision does not appear to be in conformity with the Transaction of Business Rules, which provides that "cases in which a difference of opinion arises between two or more Ministers and a Cabinet decision is desired, shall be brought before the Cabinet. Further, while this office is in no position to examine whether there is indeed a policy statement laying down first-come-first-served basis for fresh licensing, the fact is that the fourth round licences were awarded in 2001 on the basis of auction rather than first-come-first-served basis ... **It does appear, therefore that the course of action proposed to be adopted by the Minister is prima facie, not correct.**

In so far as the issue of enhancement of subscriber linked spectrum allocation criteria is concerned, Minister in his reply to PM had stated that the recommendations of the Telecom Engineering Centre, have in principle, been accepted by him.... Minister's averment in his reply is bit, therefore, legally sound Clearly there appears to have been selective acceptance of TRAI recommendations without a holistic view having been taken. **As TRAI is insistent that its recommendations are to be seen in totality as one set of recommendations, this amounts to modification of recommendations, which under the law required further consultation with TRAI."**

The note of the Joint Secretary to the PMO that categorically states that the course of action of Mr. Raja was *prima facie* not correct. Further the Joint Secretary said that Mr. Raja was making selective acceptance of the TRAI recommendations. Even after such a stringent comment made by his own office the PM preferred to remain silent over the issue, he was still not satisfied about the abuse being done by his own colleague Mr. Raja.

From the evidence it is clear that these issues were discussed with the PM. The PM desired that the Principal Secretary to PM along with Cabinet Secretary and Secretary, Department of Telecom examine all aspects of the issue. Whether any such discussions took place or not is not known, at least, not documented.

Mr. Pulak Chatterjee reverses the note of the Joint Secretary

The issue was examined in depth by Shri Pulak Chatterjee, who noted that, "A good policy should focus on the optimal use of spectrum which is the scarce commodity. Instead we are already in a position that is leading to wastage and sub-optimal use of spectrum..... In the short run, however, a balance has to be immediately found between the objective of optimum use of spectrum and a competition policy based on fair and transparent allocation processes. **Ideally, in a situation where spectrum is scarce, it should be auctioned."**

The approach however, he advocated was:

- New operators may be allotted spectrum only up to the threshold level on payment of the normal fees.
- The balance spectrum may then be auctioned among all those who hold spectrum up to the threshold level.

The Prime Minister had obviously seen the two notes of the Joint Secretary and also the subsequent note of Mr. Pulak Chatterjee.

After Mr. Pulak Chatterjee stood in support of Mr. Raja, PMO got into hibernation. The Prime Minister also fell into silence. The day after the distribution of licences however, PMO woke up only after the perpetration of the crime was complete.

After the distribution of the letter of intent, the Prime Minister wakes up

On 11th January, 2008, Principal Secretary to PM noted on the file, "PM says that the DoT has issued license today. That may be taken into account and the issues accordingly modified and submitted to him pl.". When the proposal was modified taking into view the DoT's allocation of the new licences and resubmitted to the PM on 15th January 2008, Principal Secretary to PM, on 23rd January 2008, noted, **"PM wants this informally shared with the Deptt. Does not want a formal communication and wants PMO to be at arm's length pl"**. These remarks on file only make clear that Raja had finally been allowed to violate all the norms and procedures taking advantage of the continuous silence and inaction of the Prime Minister. Now most hypocritically **'PMO wants to be at arm's length, it only means after allowing the crime to be committed, PMO wants to dissociate itself and put up a veil of innocence.**

From all the information and documents available all around, it becomes even more apparent that all the transgressions that the DoT undertook were known to the PMO. With reference to the issue of new licences, the PMO prepared the following table, methodically listing the position of the various agencies involved in the issue:

Issue	Opinion of TRAI	Opinion of Telecom Commission	Opinion of Telecom Engineering Centre	Opinion of EAM	Opinion/Decision of Minister/DoT	Suggestions
Issue of New Licences	There shall be no cap on the number of operators in a circle.	Agrees with TRAI. (This is also the present practice).		Criteria for grant of licences may be strengthened and placed on public domain. -	Accepts TRAI recommendation regarding "no cap". Propose to continue existing policy of first-come-first-served basis for grant of licences. This is a 3 stage process as follows: (1) issue LOIs on first-come-first-served basis to applicants. (2) issue UAS license to those who fully comply with LOI conditions (payment of fee etc.) on first-complied-first saved basis. (3) Issue wireless Licence for allotment of radio frequency (spectrum) in first come first-licences-first-served basis.	Since spectrum is limited and there are more than 570 applications for new licences pending, it is feared that, once a large number of LOIs are issued simultaneously on first-come-first-served basis, these licencees would never get spectrum even in the next several years. Further, 3 CDMA operators wl have applied

Issue	Opinion of TRAI	Opinion of Telecom Commission	Opinion of Telecom Engineering Centre	Opinion of EAM	Opinion/Decision of Minister/DoT	Suggestions
						for permission to operate in GSM, have been granted licence and allowed to pay licence fee, even before the policy could be announced. This means they will be eligible for additional spectrum for GSM for which existing operators have been waiting for several years. It would therefore be best to stick the 1999 Cabinet decision that licence may given subject to availability of spectrum.

To speak more precisely, the table above makes it clear that the PMO was aware of DoT's proposed plan of action on all the following counts:

(1) Change of manner of implementation of FCFS: The PMO was aware that the DoT was proposing to modify the existing manner of implementation of FCFS by taking compliance with the terms of the LOI as the precondition for grant of licences, *i.e.* DoT was planning to replace 'First-come-first-served' with 'First-complied-first-served'.

Not only was the PMO aware of the proposed change, it was also aware of the repercussions of this action, given the fact that quantity of spectrum available was limited. What this meant was that once the licences were given out on the basis of compliance with conditions of the LOI, many companies would not get spectrum in the next several years.

(2) Approval for use of Dual Technology and licences being given to three CDMA operators even before the policy was announced: The PMO was aware that the DoT had given permission to three CDMA operators to use GSM technology even before it had announced the policy permitting this. This benefit given to the three CDMA operators meant that they would be eligible for spectrum for which other existing operators had been waiting for years. In effect these CDMA operators had jumped the queue and got spectrum ahead of those who had applied years in advance and who had been waiting for it.

(3) The violation of the Cabinet decision of 1999: The PMO was aware that the DoT's action of seeking to give away licences to new operators was in contravention of the Cabinet's decision of 1999 that licences should be given away only subject to spectrum being available. The note in PMO files states, *"the MCIT was advised that the applications for new license should be taken up seriatim according to the chronology in which that were received and the number of fresh licenses in any Circle should be determined according to the availability of spectrum. The Telecom Commission had detailed discussions with the MCIT on this issue. The MCIT was of the opinion that all applications for new licences should be issued Letters of Intent and, thereafter, all those who deposit the licence fee, should be issued licences. They shall also be eligible for spectrum. Since spectrum is very limited, even in the next several years all these licensees would never be able to get the spectrum. This would also be contrary to the provisions of the Telecom Policy that had been approved by the Union Cabinet in 1999 wherein it has been specifically stated that new licenses would be given subject to availability of spectrum"*.

What could have been the compulsions of the PMO that they were unable to prevent the Minister of Communications & IT and the DoT from giving away spectrum in a random manner, despite being fully aware of the implications of DoT's actions? **The answer probably can be found in the PM's comment on the compulsions of 'coalition dharma'.**

(4) What is most intriguing, Prime Minister over and above the other failures an enumerated above to enforce norms and legality in the distribution of 2G spectrum licences by Mr. Raja had even committed gave blunder by refusing to consider the note of Mr. Chandrasekhar, the then Cabinet Secretary. Actually, the Prime Minister asked the Cabinet Secretary to put up a note on the issue of pricing of licences.

- (a) Mr. Chandrasekhar had categorically stated that the value of licence which was Rs. 1650 crores in 2001 should be jacked up to Rs. 8700 crores taking into consideration the high cost of spectrum due to 34 per cent of inflation causing 40 per cent rise in the cost of spectrum also taking into account 5½ rise in the tele density.
- (b) Mr. Chandrasekhar had argued strongly for enhancing the licence fee citing many other undisputable facts. The note was submitted to the Prime Minister in 4th December, 2009 much before the distribution of licence on 10th January, 2008.

Conclusion:

It is established beyond doubt, the Prime Minister of the country who is under oath obliged to protect the interest of the nation had deliberately not acted having full knowledge of the criminality that was sought to be perpetrated by his own Cabinet colleague, turning a blind eye to the innumerable complaints, even ignoring the firm opinion of the Ministry of Finance, even violating the earlier decision of the Cabinet. He had *** rejected the views of the Joint Secretary of his office, *** refused to consider the views of the topmost officer of the government, the

#Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

then Cabinet Secretary, Mr. Chandrasekhar. Therefore, the argument that is being advanced that the Prime Minister had acted in good faith does not at all to be considered sustainable.

The inescapable conclusion is that the Prime Minister cannot be absolved of the serious charge of dereliction of duty. He had only pretended to remain at an arm's length because he preferred remaining in office as a matter of greater than acting decisively to prevent irregularity that had caused dastardly damage to the country financially and politically to the government. He must have believed that if he had taken pre-emptive action the boat should have been rocked, the government would have collapsed.

Therefore the story that Mr. Raja misled the Prime Minister does not hold good.

The Intriguing Role of the Cabinet Secretary: The collusive role of the Cabinet Secretary is skillfully omitted.

The role of the Cabinet Secretariat and Cabinet Secretary in particular was characterized by total failure to enforce the Cabinet decision and also to implement the Transaction of Business Rules. The Cabinet had decided in 2003 that pricing of spectrum should be jointly decided by the Ministry of Telecommunications and the Ministry of Finance. The Transaction of Business Rules say that in all financial matters, the Ministry of Finance will have its role. While being fully aware that DoT was deliberately moving with a predetermined intention to take over itself the exclusive responsibility of pricing of spectrum, it did not act. Moreover, when terms of reference for the Group of Ministers was changed under the pressure of the Minister of Telecommunications, the Cabinet Secretary did not draw the notice of the Prime Minister to the earlier Cabinet decision. On the other hand it behaved in a conspiratorial way when it sought to evolve a common approach of different departments who were all known to have a different view while presenting their evidence before the JPC. While the move of the DoT with regard to the pricing of spectrum was brought to the Cabinet Secretary by Finance Secretary in April 2007, the Cabinet Secretary had only advised that Finance and DoT should settle the matter amongst themselves, which can only be taken as a serious dereliction of duty. Moreover, it cannot be unknown to him that the Secretary, Finance on 22nd November 2007 had asked the DoT to stay all activities connected with distribution of licences. There is no reason why he should not have acted more actively and ensured that the views of the Finance Ministry were taken into cognizance by the DoT.

Thirdly, when Mr. Mathur had made a presentation to him on the distribution of spectrum, the question of pricing was carefully omitted. Mr. Mathur, while deposing before the JPC had said that the point of view of DoT on the question of pricing was made known to the Cabinet Secretary. It is difficult to ascertain whether Mr. Mathur was speaking the truth, but is clear that the Cabinet Secretary on his own did not raise the issue at all.

All these go to prove conclusively that as the head of the administration the Cabinet Secretariat and the Cabinet Secretary did fail to discharge its responsibility. The subsequent role of Cabinet Secretariat in its endeavour to formulate a common approach can only be construed as a vile attempt to dilute the evidence and prevent the JPC from coming to an objective conclusion.

The DoT today takes the stand that all its actions were in pursuance of Government's policy. It fails to explain, however, why it behaved in such a conspiratorial manner if all it was doing was implementing a policy decision. What, was the need to ensure that there was no dialogue; why were repeated requests for discussions and consultations ignored? The fact of the matter is that the DoT was aware that its actions and the chart it was coursing would not withstand any scrutiny; that what it was doing was incorrect in more ways than one. Hence, the determination to ensure that no one would be able to stop it mid course!

How was it possible for the DoT to ensure that it was able to preempt action by the Ministry of Finance, the Ministry of Law & Justice and even the PMO and allocate spectrum in the manner it wanted? It was because the Cabinet Secretary kept quiet and did not do anything to stop the irregularity.

It is evident that the Department of Telecommunications chose to issue licences in spite of opposition from other concerned government agencies. **But is this the whole truth? The volume of records presented to the JPC by the different departments in the course of examination of witnesses reveals a startling fact. What emerges from the records is that Mr. Raja made a statement clearly and publicly stating what he did was everything in consultation with the Government. It may not be too far from the truth. Here again the role of the Cabinet Secretary is in question.**

The Ministry of Finance, in response to a question by an Honourable Member of the Joint Parliamentary Committee (JPC), has submitted a table which lists details of the meetings/interactions/exchange of emails between the Cabinet Secretariat and officials of the DoT and the MoF on the issue of 2G licences.

The regular interaction as evident gives rise to the strong belief that what Raja did was all known to the different levels of government machinery including PMO and the Cabinet Secretary.

Let us recall how Mr. Raja was appointed as the Minister of Telecommunications. The Radia tapes explain the reason of corporate pressure for inducting Raja as the Telecom Minister. He was considered to be the most reliable tool to serve the business interest of the corporates.

What is most intriguing is the startling revelation of the role of the Cabinet Secretariat to tutor different government Departments, surprisingly even the Governor of the Reserve Bank of India, to present before JPC common line of approach with regard to the irregularity that was perpetrated by Mr. Raja. This was an attempt to dilute the information so that the government is not embarrassed. This is an infringement on the right of the JPC to have access to undiluted facts as to be provided by the government Departments independently based on their own understanding and assessment.

Between January and July 2011, the Cabinet Secretariat made as many as twenty two (22) interventions in this regard to ensure that the undiluted facts do not emerge. It is a sad comment on the governance mechanism existing in our nation today that the Cabinet Secretariat could spend time on an attempt to cover up the truth. Had they spent the same amount of time on the actual issue of allocation of licences, and intervened when the MoF had sought its intervention in May 2007, 2G licences would not have been gifted away to certain corporate favourites at throwaway prices.

A sequence of events is listed below to reveal the actions of the Cabinet Secretariat:

28th Jan. 2011: In an email, the Joint Secretary, Cabinet Secretariat conveys the draft of the DoT submission to the PAC. Copy of the mail was also sent to the Additional Secretary & Director General, Department of Economic Affairs.

3rd Feb. 2011: The Cabinet Secretariat convened a meeting on "2G Spectrum to decide on agreed approach while making presentation before various authorities and discussions with Governor/RBI before his deposition to PAC. The meeting was chaired by the Cabinet Secretary and included Principal Secretary to PM, Secretary DoT, Additional Secretary, Telecom and other officials of DoT, JS/PMO, JS/Cabinet Secretariat, Secretary, Law, Secretary (EA) and other officers from the MoF. It is also seen from the annexure that the Cabinet Secretary sensitized the

Governor/RBI in his chamber as well as in the Committee room about his deposition to the PAC. The presentation prepared by the Cabinet Secretariat was shown to him.

I am referring to PAC because the Cabinet Secretariat obviously tried to restrain the government Departments from speaking out independently what they thought to be right as an undiluted testimony not only to PAC but to follow the same with regard to deposition before the JPC. Therefore, reference to PAC is not out of context.

There had been similar meetings of all concerned Departments, always chaired by the Cabinet Secretary to impose common line with regard to the evidence to be given to PAC and JPC. On 23rd March, 2011, 16th May, 2011, 18th May, 2011, 3rd June, 2011 the Cabinet Secretary held meetings^{#***} Even the Cabinet Secretary violation all official norms had sought to sensitize the Governor of Reserve Bank.

What was the possible ramification had the different Departments given their version of the events? Would it have been significantly different from what they have now deposed before the JPC? It may be construed to be an attempt cover up.

During the course of the JPC sittings, it has emerged that there were a number of meetings in 2007-08 between the then Finance Minister and the Minister of Communications & IT. These meetings are un-minuted and there are no records of the discussions that transpired between these two key figures. The veil of secrecy that was scrupulously manipulated, the meetings between FM and Mr. Raja were un-minuted, unmentioned in the Government records, not only that non-papers as never done in the Ministry of Finance were issued gives rise to the impression that calculated attempts were made to avoid transparency and fair play.

The Cabinet Secretary tried his best to ensure that the truth is not revealed to the JPC. While taking into account his deliberate inaction to preempt the irregularity sought to be done by the DoT, this attempt to tutor the evidence brings us to a conclusion that Mr. Raja is not alone to be hauled up, of course, he committed the massive fraud, the government itself, in fact, remaining aware of all the chain of events, chose to close its eyes has also committed a grave irregularity. The Cabinet Secretary who heads the Government administration cannot, therefore, escape from the charge of serious dereliction of duty.

The Role of the Ministry of Finance: The Note of the Finance Ministry when Mr. Pranab Mukherjee was the Minister has been refused to be accepted.

The Finance Ministry as the custodian of the nation's finances, is responsible for maintaining the financial health of the country. Identifying the potential resources and deriving the best possible results from such resources falls within its mandate. All decisions with a financial impact or involving aspects of resource mobilization require the intervention of the Finance Ministry.

In the case of the allocation of 2G spectrum, the Union Cabinet had in 2003, given the Finance Ministry the role of an equal partner in the pricing decision. The Cabinet had decided that the DoT and the MoF jointly would decide on the price of spectrum. The Finance Ministry had, through the years sought to exercise its role in the pricing decision. As has been detailed in the earlier part of this note, the DoT consistently refuted the MoF's claim, stating that pricing of spectrum was in the normal work done by the Department.

Shri Subbarao, Finance Secretary between 30th September 2007 and 4th September 2008, the period when the allocation of licences was done by the DoT had appeared before the JPC

[#] Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

on 18th September 2012 to throw light on the chain of events unfolding in the MoF during that period. In his introduction on the issue Shri Subbarao stated before the JPC, ***"... when I had taken charge, I was told that there is a Group of Ministers (GoM) whose terms of reference are under discussion between the Department of Telecom (DoT) and the Department of Economic Affairs and that I must intervene to reintroduce the provision regarding pricing of spectrum within the terms of reference of the GoM"***. He further told the JPC that Secretary DoT had responded saying that pricing of spectrum as within the jurisdiction of the DoT. In November 2007 Secretary, DoT had made a presentation before the Cabinet Secretary in which the Secretary, Finance, Shri Rao was also present. Shri Rao told the JPC that, ***"One of the messages that I got back from that presentation was that the DoT was intending to pursue issue of further licences at prices determined way back in 2001 or 2002, which I thought was inappropriate"***. So, I came back and wrote to the DoT saying that the price must be rediscovered. I did say that 'the price must be rediscovered and that giving away licences and spectrum in 2007 at a price determined in 2001 would be inappropriate.' In explaining why he felt he needed to write to DoT and where he derived his power to do so, Shri Rao told the JPC, ***"I was deriving my authority for this letter not so much from any Cabinet directive or from any terms of reference of the GoM. I was deriving authority for this from the inherent powers of the Ministry of Finance, which is to secure the finances of the Government."***

The senior-most bureaucrat of the Finance Ministry, the custodian of the nation's finances, was of the view that it would be inappropriate to apply the price of 2001 in 2007. He also wrote to the Secretary DoT giving his views and stating that it was essential that the prices be revised. How was it possible then, that in spite of opposition from the highest levels of the Ministry of Finance, the DoT was able to allocate licences in January 2008 at rates discovered in 2001?

Shri Subbarao told the JPC that the MoF was not aware of the fact that the DoT was planning to issue the Lols on 10th January 2008. Shri Subbarao had written to Secretary DoT in November 2007 seeking revision of the price of spectrum and stopping of all processes relating to the issue of 2G licences. In the absence of any response from Secretary DoT the MoF took the view that DoT had accepted their arguments and therefore all action relating to issue of 2G licences would remain in abeyance until the issue had been resolved between the two Departments. The DoT's actions of 10th January 2008 therefore caught the MoF unawares. What Shri Subbarao told the JPC was that, ***"We were not aware that these Lols were going to be issued on 10th of January, until the event had taken place. So, the question was, what did we do after the Lols had been issued Then the question was, having issued the Letters of Intent, how could we best secure the financial interests of the Government? But we did follow up on securing the maximum revenues for the Government given that Lols had been issued. As I said in my opening statement, I believe that it was the inherent responsibility of the Ministry of Finance to maximize the financial interests of the Government ... the endeavour or the motivation of the Finance Ministry was to maximize the revenue for the Government which was I believe consistent with the decision of the Cabinet."***

From Shri Subbarao's statements before the JPC, two facts emerge:

- One that the Ministry of Finance was clearly aware that giving away spectrum in 2007/08 at prices discovered in 2001 was highly inappropriate and the financial interests of the Government were being harmed. Shri Subbarao has repeatedly stated that the MoF was of the view that giving away in 2007-08 Lols and licences at prices that were determined earlier in a different set of circumstances needed to be revisited to arrive at the actual price of spectrum.

Shri Subbarao's statements also put paid to the lie being sought to be perpetrated by the DoT that the allocation of licences in 2008 at prices discovered in 2001 did

not cause any loss to the national exchequer. Not just the DoT, but senior functionaries of the Government have sought to downplay the entire chain of events saying that there was no financial loss in the entire process and that what happened was mere procedural irregularities. The Minister of Communications and IT had held a press conference in 2011 propounding the theory of "Zero Loss". The basic premise of the argument was that the giving away of licences in 2008 at the price of 2001 was a deliberate policy decision by the Government which did not cause any loss to the exchequer. Shri Subbarao has made it clear that there was an urgent need to revise the price of spectrum to reflect the actual value it held and that not doing so had led to a definite loss. Not just was this a loss, Shri Subbarao was also of the view that the Cabinet in its decision of 2003 had also sought the maximization of Government's revenues and that the DoT's actions had resulted in this aim not being fulfilled.

- The other fact that emerges is that the highest levels of the Government, including the Cabinet Secretary and the MoF were aware of what the DoT was planning to do. It needs to be thought about why the Cabinet Secretary did not intervene more emphatically to prevent the DoT from going ahead with its actions. The MoF too, did not do enough to prevent the DoT in its actions. When asked by a member of the JPC why he thought that the meeting of 9th January 2008 which was scheduled to discuss the issue of spectrum pricing, was postponed to 15 January 2008 and whether it had anything to do with the issue of license on the 10th of January, Shri Subbarao stated, *"I can only speculate because there is nothing on record to draw a motive a motive for that. But with the benefit of hindsight, it is possible to surmise that the meeting scheduled for the 9th of January was postponed in order to get over the issue of Lols."*

The reason why the DoT was able to go ahead with its action can be found in the records of the Prime Minister's Office and the Cabinet Secretariat. The entire allocation process had been undertaken through a consultative mechanism and while the MoF may have, at the level of the bureaucrats, opposed the DoT's actions initially, they too fell in line and played along to ensure that the corporate benefited, even though it was at the cost of the exchequer.

He did not follow up his letter of 22nd November 2007. He did not try to ascertain whether things were moving in the manner MoF wanted. This raises a serious question that the MoF, the custodian of the national exchequer, should have acted more firmly and diligently to enforce the Cabinet decision.

In the course of the JCP it has emerged that the Minister of Communications and IT had meetings with the Finance Minister in 2007, with no minutes of these meetings being available. What were these Ministers discussing? Why was it that the bureaucracy was seeking to ensure that the price of spectrum was revised, but that the political leadership failed to follow up on what their bureaucrats were saying? There was colossal failure on the part of the Ministry of Finance in following up the issue of price fixation taking into account the improvement of the market condition in between 2001 and 2008. Even the note of the Ministry of Finance on 25th March, 2011 when Mr. Pranab Mukherjee was at the helm while dealing with the question what could have been done after 122 letters of intent were distributed on 10th January, 2008 at the price of 2001, the note gives the answer, 'There was a way out by invoking clause 5.1 of the UAS license, which inter alia, provide for modification at any time the terms and conditions of the licence, if in the opinion of the licensor it is necessary or expedient to do so in public interest or in the interest of the security of the State or for the proper conduct of the telegraphs. DoT could have invoked this clause for cancelling licences in case of MoF had stuck to the stand of auctioning the 4.4 MHz spectrum. Perhaps some litigations would have arisen as a

consequence. It may be mentioned that while the UAS licences were signed between February 27 and March 07, 2008, spectrum allocations were done starting only in April, 2008, almost 4 months after the Lols were issued.'

It is clear that if the Minister of Finance, Mr. Chidambaram was serious and insistent to protect national interest taking into consideration the huge undervaluation, he could have advised the Government to invoke the rule that the Ministry of Finance subsequently in their note had suggested. Therefore, Mr. Chidambaram was blowing hot and cold just like Prime Minister refusing to listen to the opinion of the officials of his Ministry allowed the illegality to be perpetrated. After everything was done, he is suggesting the new spectrum that is available can be sold at a market price.^{#***} the national interest.

The Role of the Solicitor General: The dubious character of the Solicitor General is not being noted.

In the entire process of allocation of 2G spectrum, one individual who was actively involved in the allocation process, but who managed to evade the subsequent fall out, was the then Solicitor General, Shri. G. Vahanvati. Shri Vahanvati's notings and advice appear at different points, substantiating the course of action being undertaken by the DOT. Shri Vahanvati also appeared before the JPC to depose on the issue.

The Department of Telecommunications had, in October 2007, sought the advice of the Ministry of Law and Justice on the manner in which the large number of applications pending for the grant of UAS licences needed to be dealt with. The Ministry of Law and Justice responded saying that the issue first needed to be discussed in the Group of Ministers. Shri A. Raja, the then Minister of Communications & IT turned down the advice of the Ministry of Law and Justice terming it to be out of context.

Subsequent to the Minister of Law and Justice giving his comments on the need for the issue to be examined by a GoM, the DoT sent this same file directly to the then Solicitor General Shri G.E. Vahanvati seeking his views on the issue. DoT officials, bypassing Government's established procedure for seeking legal advice from the Ministry of Law & Justice, carried the file to the Shri Vahanvati for him to examine the issue and record his views. Shri Vahanvati, ignoring both, the Minister of Law & Justice's recorded views and the fact that the file was not being processed through the proper channel, recorded his view that, '**... what is proposed is fair and transparent**'.

The speed, with which this entire chain of actions was performed, is itself surprising, given the manner in which Government departments normally function. A note was put up by a Director in the DoT on 7th January 2008 to the Deputy Director General (AS). The DDG (AS) got some additional information typed on the note put up to him and sent the note further up to Member (Technology), from where it went to Member (Finance), Secretary (Telecom) and then the Minister of Communications & IT — all of this happening in the course of one single day i.e. 7th January 2008 itself. The Minister commented on the file, "Please obtain Solicitor General's opinion since he is appearing before the TDSAT and the High Court". The file was marked to the Secretary (Telecom) who in turn marked it to the Solicitor General. The Solicitor General too gave his opinion on the file on 7th January 2008 itself, noting, "***I have seen the notes. The issue regarding the new LOIs are not before any Court. What is proposed is fair and reasonable. The press release makes for transparency. This seems to be in order***". Obviously there was a great hurry in seeking to ensure that the process was pushed through and the press release regarding the issue of LOIs approved.

[#]Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

Mr. Vahanvati's action was surprising, given the fact that the Ministry of Law & Justice, of which he was a part, had already recorded a contrary view. The issue of allocation of 2G licences had been under very close scrutiny. Mr. Vahanvati could not have been oblivious of the ramifications of the entire issue. Yet when the file came to him directly from DoT, without following the proper procedure, he chose to record his views without consulting the Minister of Law & Justice.

Shri Vahanvati told the JPC that he had been unable to apply his mind completely to the matters raised by the DoT on 7th January 2008, given the fact that the Court had just opened and he was under tremendous pressure. He told the JPC that all he had commented on was the fact that the issue of the LOIs was not before any Court and that he had no idea who the applicants were or what the entire process was about. He told the JPC, "On the aspect of issue of licences, I had no reason ... to suspect that something untoward was going on or was going to take place ... Trust is something which I have to repose not only in the Department of Telecommunications but I have to assume the same with regard to every Ministry of the Government."

Shri Raja has, however, accused Shri Vahanvati to being party to all his decisions and giving his seal of approval on the actions of the DoT. Shri Vahanvati's actions in giving an opinion on the DoT's without following proper procedure or without referring the issue to the Ministry of Law & Justice give credence to Shri Raja's claims that Shri Vahanvati was party to the decisions being taken by the DoT. This is yet another instance to prove how the actions of the DoT were known to the different agencies, departments of the Government and how they failed to prevent the DoT from going ahead with its actions.

He even said before the JPC that he did not read the first two paragraph of the draft statement sent by DoT for his approval. He was in a hurry. Not only that he candidly declared that he was unaware of the controversy with regard to distribution 2G spectrum licences that was there in the public domain.

The Role of the Corporates: The corporates have virtually taken over the Ministry of Telecommunications

The allocation of the 2G licences had been undertaken to benefit a few corporate houses. The DoT had, singlehandedly, chosen to go ahead with the allocation of the licences, ignoring the opinion of different Government departments. The DoT's insistence in seeking to provide benefits to the corporate houses is explained when one looks at the history behind the allocation of this particular Ministry to the particular Minister in charge.

It has been past practice in the DoT, as has emerged from depositions of the different witnesses that the corporate houses have always sought to influence policy making in a manner that benefits them. In 1999 when a bail-out package was being provided to the supposedly ailing telecom companies. (a) data was manipulated, figures were generated to show that they were incurring heavy losses to ensure that double benefits were provided to the then existing operators. (b) The grant of excess spectrum beyond the contracted quantity of 6.2 MHz is yet another instance of how the corporate managed to convince the DoT to provide them extra benefits. Companies had been hoarding precious spectrum well beyond the contracted, and required quantity, with the result that spectrum was not available for new entrants. This in turn meant that the existing cellular operators were not only just retaining excess spectrum, monopolizing the market, but were also ensuring that competitors could not enter the market.

What happened in January 2008 was beyond the terms of influence which had come to expected as normal in the DoT. What was the impetus for this special effort on the part of the

Minister of Communications & IT to ensure that the corporate benefited? The Radia tapes, which leaked into the public domain in November 2010, give some part of the answer. It emerged very clearly from the tapes that Ms. Nira Radia, who was a lobbyist for corporate houses across the spectrum, had lobbied on behalf of her clients to ensure that Shri A. Raja was given the portfolio of Communications and Information Technology. Using the influence of media persons, and politicians, Ms. Radia managed to ensure that the Prime Minister was convinced about appointing Shri A. Raja as the Telecom Minister. If the corporate houses had lobbied to have Shri A. Raja as the Telecom Minister, it only stands to reason that they expected to be rewarded in return.

The actions of the DoT between 24th September 2007 and 10th January 2008 displayed a blatant disregard for any norms of propriety or legality. All possible violations, be it change in the cut-off date subsequent to accepting the applications, disregarding the suggestions of the Ministry of Law & Justice and the MoF, misrepresenting facts to the Prime Minister, all were done by the Minister of Communications & IT-all towards the aim of providing 2G licences to companies he favoured.

However, the actions of the MoC & IT between September 2007 and January 2008 pale in comparison to the act of giving away licences to companies which were legally not mandated to receive those licences. 85 of the 122 licences given in 2008 were to companies which did not satisfy the eligibility conditions prescribed by the DoT. These companies had suppressed facts, disclosed incomplete information and submitted fictitious documents to the DoT-i.e. these companies had used fraudulent means to obtain the UAS licences and the spectrum they carried. The point in question is that the DoT had no system of mechanism to verify the facts provided by the applicants. The hole was too big to enable the infiltration of criminality easy.

Who were these companies and what was the incomplete/incorrect information that they had disclosed?

122 licences were granted to 13 companies in 2008. Of these 13, 9 (nine) were real estate companies who were entering the business of telecom for the first time. These real estate companies neither had any previous exposure to the telecom sector, nor did they possess any infrastructure/resources, which could have given them any advantage on entering the telecom sector. Why the real estate businessmen could grab the largest part of the new licences? It was due to the fact that they were all known previously to Mr. Raja while he was the Minister of Environment.

In December 2005 the DoT had issued broad guidelines with regard to eligibility for grant of Unified Access Services Licence (UAS) in a Service Area. The important eligibility conditions of the guidelines were clearly spelt out.

The applicant companies were also required to provide the following documents to meet the requirements of conditionality.

The applicant company was also required to give an undertaking to the effect that if the application was found to be incomplete in any respect and/or found with conditional compliance, the same was to be summarily rejected. The applicant was also required to certify that if any time any information given or statement furnished was found incorrect for obtaining the licence was found incorrect, then the application and the licence granted on the basis of such application would be cancelled.

The stipulation meant that the verification of the applications with respect to the authenticity of the documents submitted by the applicant companies was an extremely crucial task for the

DoT, as it would determine whether the applicant company was eligible to receive the licence. Yet, the DoT chose to give the licenses and spectrum without any examination or check of the documents submitted. The result was that as many as 85 of the 122 licences granted, were given to ineligible companies. As said earlier, the DoT did not verify the facts as mentioned in the applications.

A majority of the companies which got these UAS licenses were real estate companies, companies which had only been in the business of buildings and real estate, not even remotely connected with telecom. Neither did these companies have any infrastructure or any other special feature which made them suited to enter the business of telecommunications. That they chose to do so is only indicative of the business potential they saw in the telecom sector and the profits they envisaged on their entry into the sector. This fact is also borne out by the fact that a major portion of these companies sold their stakes to international telecom giants at huge profits within a few months of receiving the licence and spectrum. This was possible because there was no lock-in period preventing the companies from disinvestment within a specific period of time. The fact that these companies were desperate enough to violate laws and fudge records to acquire the licences and spectrum only reinforces that fact that these companies had spotted huge profits in this sector and were determined to enter the sector to reap the profits, whatever means they may have to adopt for it! All this was possible because collusion between Raja and corporates.

Nine (9) of the thirteen (13) companies which were granted the 85 licences were real estate companies. 6 of these belonged to the Unitech group of Companies and had submitted their applications for grant of UAS licences on 24th September 2007. These companies had also submitted copies of the Memorandum of Association and Articles of Association falsely indicating that their main object was telecom business. Without due diligence and examination of the documents submitted by the different applicants 122 LOIs were granted in a span of 45 minutes on 10th January 2008. The earlier practice of 30 days scrutiny was skillfully abandoned.

The sanctity of any cut-off date is vital, for it ensures that as on a particular date all applicants are at par and then the process is carried forward. Accepting applications which are clearly ineligible on the cut-off date vitiates the entire process being undertaken. The inexplicable hurry shown by the DoT in wanting to give away the licences is also very suspicious. The entire chain of events makes it appear that the DoT had only one agenda, and that was to give away licences and spectrum to its chosen few companies.

What is evident is that companies created different identities, acquired spectrum and then merged to consolidate their resources. It was all a larger gameplan being worked out and put into play. The corporates were plotting the rules; the DoT was happily acquiescing, ensuring that the will of the corporate was done! There can be no other suggestion to explain the DoT's extreme laxity and irresponsibility in not seeking to scrutinize the applications and in choosing to not act against the corporate even when these lacunae had been pointed out. It was only when the Supreme Court, in response to a PIL, cancelled all 122 licences that any action was taken.

Swan Telecom Private Limited, a telecom company applied for UAS license in 13 service areas. Another company, Reliance Telecom Ltd. which held more than 10% stakes in Swan, was already operating in all the service areas for which Swan Telecom Private Limited had applied for. In terms of the DoT's guidelines, Swan Telecom Private Limited was not eligible to apply for the UAS license. Yet, Swan's application was not rejected. DoT had a stipulation regarding shareholding pattern. It was essential, therefore that the DoT should have had the issue examined by the Ministry of Corporate Affairs, as had been advised by the Finance Wing of the DoT. This

was not done and Swan was given an opportunity to resubmit a revised stake holding pattern in December 2007, 9 months after they had submitted their initial application. In spite of the revised stake holding pattern being submitted in December 2007, the seniority of Swan's application was retained at March 2007 (the date of the initial application). Submission of the revised stake holding in December 2007 meant that Swan Telecom had exceeded the cut-off date of 25th September 2007 and its application was not eligible to be considered for grant of licence. In yet another instance of benefit being given to a corporate house, its seniority was retained at the date of its earlier application. Swan Telecom, therefore, was given two benefits by the DoT — one its ineligible application was accepted and it was allowed to re submit a revised stake holding pattern well after the cut-off date, and second, its seniority was retained at the date of its original application in order to keep it in the race for UAS licence and spectrum. The reason for this largesse can at best be guessed.

Another major benefit that was granted to another large corporate house is in the grant of Dual Technology licences. In April 2007 the DoT sought the recommendations of TRAI with respect to allowing "service providers to offer access services using combination of technologies (CDMA, GSM and/or any other) under the same licence". TRAI's recommendations were received in August 2007 wherein TRAI recommended that a licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of **dual spectrum**. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternate technology or which would be paid by a new licensee going to use that technology".

On TRAI'S recommending in August 2007 the use of dual technology, the DoT took a decision on the issue on 17th October 2007. This decision was taken by the DoT without referring the matter to the Full Telecom Commission, even though it involved giving away licences and spectrum under dual technology at the rate discovered in 2001. Having decided on 17th October 2007 that it would henceforth permit dual technology, the DoT issued a Press Release in this regard on 19th October 2007, announcing the acceptance of TRAI's recommendations with respect to dual technology.

However, even before making the official announcement on 19th, the DoT, on 18th itself, gave in principle approval to the three companies which had applied in 2006, when the issue of dual technology was not even in consideration. The DoT had accepted applications for a providing service using dual technology when there was no such provision in place. Not just were the applications accepted, they were given seniority and awarded approval even before the DoT had made an official announcement of the new provision. Since spectrum was a scarce resource and short in supply, what this meant was that a company which applied on 19th October, the day DoT announced its new policy, could not get licence and spectrum to date, whereas those who were benefited on the 18th acquired the much in demand spectrum instantly. Not just this, while the three companies were granted approval on 18th itself, the company which applied on the 19th was not given a Letter of Intent (LoI) till the 10th of January 2008, when its application was clubbed with all the other applications.

From the DoT's actions it is apparent that there was a clique of a chosen few operators who could decide and frame the DoT's policies. It may not be too far-fetched to think that maybe the DoT considered introducing dual technology to benefit the three operators who had applied in 2006 when there was no such provision in place. That also explains why the DoT was willing to grant them approval even before the policy was officially announced. In the past too, around 2000-01, the DoT had exhibited such consideration for certain corporate houses. When certain corporate houses had been found to be violating the terms of their contract by illegally using Wireless in Limited Loop (WLL) (which was a Basic service, similar to landline telephones)

to provide all India cellular services, the DoT had chosen not to cancel the licence of the violating company, and had instead charged a pittance of a penalty amount. The DoT has all through had a tendency to be influenced by the corporate houses.

The benefits that the corporate enjoyed extended beyond the exemptions given and obvious favours extended to them. There were other, less evidently visible, but equally beneficial benefits which these private players. Foremost among them was the absence of a lock in period for the spectrum, i.e. these companies did not have any compulsions to retain the spectrum for a fixed period after acquiring it, therefore making it extremely easy for them to trade in the spectrum they had acquired. These companies took advantage of the absence of a lock in period, trading in spectrum just like in the stock market.

The extra spectrum was another benefit that the long term players in the sector had enjoyed. How was it possible, why was it allowed, these are all questions which need to be examined, the manner in which extra spectrum was given to the operators was extremely non transparent. The result has been that companies were able to hoard precious spectrum over the years.

Interaction with corporate houses to understand the flow of the sector, the future dynamics and the emerging areas is perfectly understandable. However, when it reaches a stage where the corporates shape and formulate the Government's policies the country is in danger. Public good is subsumed in the quest for individual growth and the corporate aims become the Government's. False claims and unjustified arguments are then put forth by the Government in order justify its pursuit of the private operator's goals. This is what happened in the 2G case too. The twin false claims of seeking to increase tele density and reduce tariffs were used by the DoT to brush aside any argument that spectrum needed to be given at rates which reflected its real value. The aim of the corporate houses to acquire vast quantities of spectrum, keep out competition and enjoy the benefits of one of the world's largest telecom markets has been consistently fulfilled by the DoT over a period of time.

The Role of the CBI: CBI did not probe, it did when court ordered

The Central Vigilance Commission (CVC) had been receiving, Since 2007, a number of complaints with reference to the First-Come-First-Served (FCFS) policy being adopted by the DoT in respect of the allotment of the Unified Access Services Licence (UASL). After it failed to receive specific responses to the questionnaire it had sent to DoT on this issue, the CVC decided to undertake a direct enquiry under section 8(1) (d) of CVC Act, 2003 with effect from 17th June 2009. The CVC sent its report to the CBI on 12th October 2009, stating that, "The Commission is, therefore, of the view that the matter requires further investigation to establish the criminal conspiracy in the allocation of 2G Spectrum under Unified Access Services Licence Policy of DoT and to bring to book all wrong doers. ***The CBI may take early necessary action in the matter and keep the Commission duly posted with the progress.***"

The CBI, based on source evidence and the CVC's report, registered a case against on 21st October 2009. The case was registered:

- Under Indian Penal Code and Prevention of Corruption Act
- Against unknown officials of the Department of Telecommunications, Government of India, unknown private persons/companies and others
- In respect of allotment of Letters of Intent, Unified Access Services (UAS) Licences and 2G Spectrum by the Department of Telecommunications

The main allegations made out in the case were that:

- The entry fee for UAS licences, for all 22 circles, in the year 2008 was kept by DOT as Rs. 16 58 crores, i.e. prices discovered by auction of Cellular Mobile Telephony Licences in 2001.
- That these licences issued in 2008 were issued on First-Come-First-Served basis without any competitive bidding.
- That in violation of the TRAI recommendations of no cap on number of licences, DOT announced 25th September 2007 as the cut-off date for consideration of licence applications, despite earlier announcing 1st October 2007 as the cut-off date.
- That in implementing the FCFS policy, the entire seniority of applicants was manipulated by margin of a few minutes.
- That the suspect officials of the DOT had selectively leaked the information to some applicants regarding the date of issuance of letter of intent on 10.01.2008, to enable them to deposit the fee earlier than others.
- In the whole process the DOT has given undue benefit to a selective number of corporates.

Having registered the case in October 2009, the CBI seemed to run into a dead end and the progress of the case became very slow. It was only in November 2010, after the CAG report on the issue was tabled in Parliament and the Supreme Court took cognizance of the case that the CBI began to take action. CVC's direction of early action and keeping the Commission posted with the progress was cynically violated.

The CBI calculated that on account of non-revision of the entry fee to reflect the actual value of spectrum in 2008, there had been a definite loss to the national exchequer. The CBI calculated that an additional revenue of at least Rs. 22,536 crore from the 122 new licences and Rs. 8,448.95 crore from the Dual Technology licences, coming to a total of Rs. 30,984.55 crore would have accrued to the exchequer, had the entry fee been revised.

The case is still under progress and is being examined by a special court. However, there are certain facts that need to be kept in mind when we look at the CBI's examination of the case. The events under examination unfolded in late 2007, early 2008. The entire issue was in the attention of the media during this period. Yet, it was only on the directions of the CVC that the CBI first registered a case in October 2009, nearly two years after the actual events had happened. And when it did register a case, it was against unknown persons. The CBI conducted its first search in October 2009, but failed to undertake any further action. In December 2010, the Supreme Court gave investigative directions to the CBI and directed the appointment of a Special Prosecutor and the constitution of a special trial court. It was only subsequent to the intervention of the Supreme Court that the CBI's investigations began to pick up. The CBI then filed its first charge sheet on 2nd April 2011, a year and a half after it began investigations. It also filed a supplementary charge sheet around 25th April 2011. The CBI's actions give rise to the suspicions that the agency commenced its investigations without actually intending to get into the actual facts of the case. The tardy pace of the investigations, as also the fact that the pace only picked up when the Supreme Court directed the agency and began to monitor the probe also points towards the same. The recent news items revealing the nexus between the CBI's public prosecutor and one of the accused in the 2G case, Shri Sanjay Chandra, are all indicative of the constraints that the CBI faces and the malaise that ails the agency.

That CBI is not an independent investigative agency is clear. It did not act even after CVC asked it to do. The reason is simple. The political leadership of the Government did not want the CBI to probe seriously. That CBI is under the thumb of the Government is more clear today after the Coalgate scam had surfaced. It also happened after CAG report was placed on the Table of the Parliament. The failure of the CBI at the beginning and the process of investigation that it is conducting can be construed to be as one of the many failures that the other Departments of the Government are tainted with in the case of illegality that was perpetrated by Mr. Raja in the distribution of 2G spectrum. This is a sordid story of a total and colossal failure of the entire government machinery.

Sd/-
(GURUDAS DAS GUPTA)

MINUTE OF DISSENT

—Shri Arjun Charan Sethi, MP

I hereby submit the minute of dissent to the report of the Joint Committee to examine matters relating to allocation and pricing of Telecom Licenses and Spectrum that:

“The Chairman of the Joint Committee has failed to call all the concerned parties to appear before the Committee for collection of information relating to the allotment of spectrum, licenses and its pricing.”

Sd/-

(ARJUN CHARAN SETHI)

MINUTE OF DISSENT

—Shri T.R. Baalu, MP

1. Introduction

1.1 This JPC was constituted in order to examine matters relating to allocation and pricing of telecom licenses and spectrum from 1998-2009. It was expected that the JPC would proceed in a systematically and unbiased manner and bring out the complete truth behind all the procedural, policy, legal and political decisions within its terms of reference. Unfortunately, full facts have not been properly appreciated in the preparation of the report and facts have been chosen selectively and conveniently to reach a preconceived conclusion. Instead of reaching a conclusion fairly and freely based on the facts available details have been gathered to suit a particular decision. I am therefore constrained to give this note of dissent.

1.2 In this note, I first deal with the JPC's failure (or refusal) to permit Mr. A. Raja, MP and former MoC&IT, to depose before the Committee. I then deal with the JPC Chairman's refusal to place all the relevant documents before the JPC for consideration. According to me, these two basic errors completely vitiate most of the conclusions in the Report. # ***

***I thereafter deal with the specific issues on which I have disagreed with the majority view, which pertain to (i) dual technology; (ii) fixation of cut-off date; (iii) eligibility of UASL applicants; and (iv) first-come-first-served policy.

2. Failure to examine Mr. A. Raja

2.1 I must mention at the outset that our colleague Mr. A. Raja, MP, former MoC&IT, on 22.04.2013 circulated a detailed written statement dealing with all aspects relating to the grant of UAS Licenses and allocation of 2G spectrum by the DoT in 2007-08. He was constrained to do this because despite repeated requests by him and by some members of the JPC (including the undersigned), the Chairman did not allow Mr. A. Raja to depose before the Committee. In my view, all the factual and legal aspects of this matter have been correctly and cogently recorded in the written statement. The contents of that statement should be read as part and parcel of this note of dissent. This note of dissent is based on the written statement of Mr A. Raja, M.P. submitted to the JPC and other documents which were not taken into consideration by the JPC.

2.2 The refusal by the Chairman to permit Mr. A. Raja to depose is simply inexplicable. This action is enigmatic, Mr. A. Raja was the MoC&IT from 16.05.2007 to 14.11.2010. The Department of Telecommunications (DoT) issued about 122 Unified Access Service (UAS) Licenses in 2008, followed by allocation of 2G spectrum to the licensees. It is quite obvious that he would be best placed to explain the policy and rationale of the Government behind the issuance of UAS licenses and grant of spectrum, as well as the sequence of events and the role of various individuals and institutions.

2.3 In his detailed written statement, Mr. A. Raja has also specifically mentioned several meetings with the Hon'ble Prime Minister, the then Hon'ble External Affairs Minister, the Hon'ble Finance Minister and the then Solicitor General. Despite requests, the Committee chose to not examine any of the Cabinet Ministers. The Committee did examine the then Solicitor General,

#Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

who gave his version of the facts. The proper course would be to then examine Mr. A. Raja, who would give his version, and then the Committee could come to a conclusion. This was not done.

2.4 The demand by the Members, prompted by natural justice, to examine Mr. A. Raja has been there right from the inception of the JPC. It has repeatedly been turned down only one ground: lack of time. The Chairman had also stated that if Mr. A. Raja was to be examined, other persons who held this portfolio would also have to be examined, for which time was insufficient. It is distressing to note that his deposition was excluded on such a specious ground. 'Lack of time' surely cannot be a reason for the Committee to ignore vital evidence. If the Committee requires more time, a simple request would have sufficed. It is, after all, a matter of record that the term of the Committee was repeatedly extended whenever sought. Lack of time can never be an excuse for a full and thorough enquiry as it will lead to an incomplete conclusion.

2.5 # ***

3. Failure to examine all relevant documents

3.1 *Vide* my letter dated 13.09.2013, I had drawn the attention of the Chairman, JPC to the fact that there was an important aspect of the matter within the terms of reference of the JPC, which had been overlooked/ignored. This was the stand taken by the Department of Telecommunications in various cases in the High Court, Supreme Court and TDSAT and in correspondence with the CAG. The JPC had neither examined the documents in this regard, nor the persons who were instrumental in formulating the said stand. However, a bare reading of these affidavits/letters showed that the DoT had fully explained and justified its position on various issues such as cut-off date, FCFS policy, eligibility of applicant companies, etc., which were being considered by this JPC. As such, it became very necessary to examine these affidavits/letters in detail and also examine the officers who were instrumental in preparing and setting these affidavits/letters, before the JPC closed its proceedings.

3.2 # ***

3.3 A bare perusal of the aforesaid affidavits and correspondence reveals that the conclusions in the Report are at stark variance with the Departmental records, written affidavits and oral testimony of the officers, and the DoT-CAG correspondence. # ***

3.4 # ***

***None the less, I hereafter deal with the specific issues on which I have disagreed with the majority view.

4. Dual Technology

4.1 The report in para 10.38 states, "Considering the fact that the matter regarding inter-se seniority of the applicants for Dual Technology Spectrum and spectrum for new licences had already been decided and the Dual Technology Spectrum applicants were to be treated at par with the existing licensees and not with applicants for new licences, the application of TATA Teleservices Ltd. was meted out a differential treatment".

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4.2 The above conclusion appears to be based on para 6.23 of the TRAI Recommendations of 29.08.2007, but this paragraph has not been understood properly. It reads as under:

Regarding inter se priority for spectrum allocation, when the existing licensee becomes eligible for allocation of additional spectrum specific to the new technology, such a licensee has to be treated like any other existing licensee in the queue and the inter se priority of allocation should be based on the criteria that may be determined by the Department of Telecommunications for the existing licensee.

4.3 Firstly, the above paragraph is concerned with inter se priority between existing licensees (i.e., dual technology applicants) who are in the queue. It does not deal with inter se priority between dual technology applicants and single technology applicants at all. On this issue, the documentary and oral evidence before the Committee makes it clear that there were two factions in the DoT itself — vide his note dated 24.10.2007, the then Secretary (T) made, it clear that he wanted Tatas to be at the bottom of the list of UASL applicants (this meant that they would never have got any spectrum), whereas some other officers wanted them to be at the top of the list.

4.4 The note of the then Secretary (T) is revealing:

Some more applications have been made for permission to use GSM technology in areas where the applicant is using CDMA technology. These applications should be considered along with the applications for new licenses numbering 575 — some pending since more than six months in chronological order as they are received. In case applications made now for permission to use GSM technology in areas for which the applicant is licensed to use CDMA technology are allowed, these applicants would get an unjustifiable advantage in allocation of GSM spectrum.

(Emphasis in the original)

(DoT File No. 20-100/2007-AS-I Vol. 1, page 24-25/N)

4.5 The Secretary (T) was also the Chairman of the Telecom Commission, which approved the TRAI Recommendations including para 6.23 thereof, which is being cited in the Report. This note itself shows that the Telecom Commission's view — and the DoT's view — of para 6.23 is completely different from this JPC's view, and how wrong the conclusion of the JPC is.

4.6 Moreover, there was a fundamental difference between the views of the officers of the AS Wing and the WPC Wing. While as per the AS Wing, seniority should have been considered on the basis of date of payment, the WPC Wing maintained that seniority would be considered on the basis of date of application for spectrum. Thus in the WPC files for each service area, the cases have been processed on the basis of date of application for spectrum only.

4.7 In any event, this issue of inter se priority between dual technology applicants and single technology applicants was never brought to the notice of the then MoC&IT, and he had no opportunity to take any decision in this regard.

4.8 Secondly, the factual and legal position regarding compliance with roll-out obligations as a condition precedent for allocation of dual technology spectrum has been completely ignored in the report. The recommendations of TRAI as well as the policy of the DoT are clear that in order to receive allocation of dual technology spectrum, the licensee must have fulfilled its roll-out obligations under its existing spectrum. This is clear from the following extracts:

[The] Authority is of the view that if an existing licensee wishes to provide services using another technology then he must be treated as per the norms of . spectrum allocation

in bands for alternate technologies. On payment of the specified fee for the Service area for which the LICENSEE wishes to provide plurality of technologies, the licensee may be given additional spectrum equal to the initial spectrum allowed in the license for that technology. The Authority further recommends that in order to ensure that this additional spectrum is efficiently and properly utilized in a timely manner; the licensee should also be required to fulfill the contingent roll out obligation.

(para 4.35 of TRAI Recommendations)

No additional spectrum may be allocated to licensee till he does not fulfill the roll out obligations.

(para 5.27(ii) of TRAI Recommendations)

Similarly it is proposed to give approvals for usage of alternate technology to other UASL operators also presently using anyone of the wireless access technology (GSM or CDMA) on payment of required fee. However, in order to ensure that only serious players are to be considered, such requests for dual technology spectrum may be considered only from those applicants who have already met the existing roll out criteria in their existing UAS Licenses.

(para 8(i) of Statement of Case prepared by the DoT)

Before processing the pending requests for dual technology spectrum of these companies, it is also expected to get rollout of services by these companies using their single technology spectrum so that these companies do not hoard the scarce resource of spectrum.

(para 7(ii) at p. 21/N of Note in DoT F. No. 20-228/2009-AS-I)

4.9 The records seen by the Committee show that TTSL and TTML had not complied with their roll out obligations, and as such no dual technology spectrum could have been allotted to them until such time as they complied with their roll out obligations. This aspect has been completely overlooked in the report.

4.10 The other condition precedent for obtaining dual technology spectrum is that the licensee must have paid its spectrum usage charges and hold a valid 'No Dues Certificate' issued by the WPC. The reason for this is simple: a licensee cannot be allowed to hoard spectrum, thereby preventing its optimal utilisation and allocation to other, more efficient operators. The records show that TTSL and TTML initially did not furnish this No Dues Certificate, and their application for amendment to their license to permit dual technology was cleared by the MoC&IT as soon as they furnished the No Dues Certificate. This aspect has also been completely ignored in the report.

4.11 It is self-evident that it would be illegal and contrary to national interest to allocate dual technology spectrum to operators who have not complied with roll-out obligations with their existing spectrum or those who are yet to clear their existing spectrum usage charges, i.e., those who are simply hoarding spectrum. It appears as though the JPC wishes to perpetuate this illegality by simply refusing to even consider this aspect of the matter and insisting on allocation of dual technology spectrum to TTSL and TTML.

5. Fixation of Cut-Off Date

5.1 The report in para 10.40 describes the decision of the DoT to process applications received up to 25.09.2007 as a “procedural infirmity” and faults it on two grounds: (i) that spectrum availability was not “clearly calculated” while taking this decision and (ii) the decision was not immediately publicised.

5.2 The conclusion in the report is not correct for the following reasons:

- (i) The report has ignored the apparent contradiction between NTP-99, UASL Guidelines and TRAI Recommendations on the aspect of entry of additional operators. According to one portion of para 3.1.1 of NTP-99, availability of spectrum was essential for introduction of additional operators. But this was in the context of CMTS licenses. The same NTP-99 also provided for issuance of BTS licenses on a continuous basis. After changeover to the UASL regime, when all licenses were issued as UAS Licenses covering both wireless and wireline services, there actually remained an unresolved inconsistency in NTP-99 on this issue. Further, according to UASL Guidelines, the licenses were to be issued on a continuous basis and without any automatic grant of spectrum. Moreover, as per TRAI Recommendations, there was to be no cap on the number of licenses. Thus, these three fundamental documents — NTP-99, UASL Guidelines and TRAI Recommendations — had to be harmoniously construed.
- (ii) Though processing of applications had not started, out of experience it would have been known to the DoT that some of the applications would be ineligible and would be rejected. (As it turned out, 110 out of 232 applications were rejected on this basis.) Also, in the past, companies had been issued licenses and then had to wait for over a year to get spectrum. This was an accepted fact in the industry.
- (iii) Only tentative availability of spectrum was disclosed by the WPC Wing. In fact, even well after the policy decision was taken, the WPC Wing was still ‘working out’ the amount of spectrum available. The fact that more spectrum was likely to become available because of vacation by Defence was also in public domain. It was mentioned in the Consultation Paper issued by TRAI itself in June 2007. In this regard, it must be noted that spectrum had always been available, but it was not properly disclosed. In the spectrum allocation done in 2008, no spectrum was actually vacated by the Defence: only the spectrum that was earlier lying without being used was properly coordinated and made available for allocation. This is recorded in the WPC Wing files for each service area.
- (iv) The rush of applications had started after announcement of the cut-off date. Till then applications had been received in routine course. It was obvious that most of the applications after 25.09.2007 were speculative. The publication of the press release really divided the applications into two homogenous groups.
- (v) The DoT file notes show that the officers were conscious of the fact that on the one hand, some sort of line had to be drawn since all 575 applications could not be processed, and on the other hand drawing any sort of line between applicants could have legal implications. Thus they proposed the date of 25.09.2007, which was the most reasonable option given the circumstances.
- (vi) The then MoC&IT was open to processing all 575 applications and issuing LOIs to all who were eligible. This fact was known to the Hon’ble PM also, as seen from the notes in the PMO files. It was the then Secretary (T) who opposed this idea on the ground that “[NTP-99 has stipulated that availability of adequate frequency spectrum

is essential for entry of additional operators. Hence the options to issue LOIs/licenses to all 575 applicants do not stand ..." (Note dated 25.10.2007 in page 2/N of DoT File No. 200-100/2007-AS-I).

- (vii) Thus, on a harmonious reading of the provisions of NTP-99, UASL Guidelines and TRAI Recommendations, and keeping in view the likely number of eligible applications, the likely availability of spectrum, and the industry precedent of licensees waiting for spectrum allocation, the most suitable method was to issue LOIs to all eligible applications received up to 25.09.2007.
- (viii) Furthermore, when the then Secretary (T) wished to discuss this matter again, a meeting was again held on 06.11.2007 where all issues were discussed threadbare and it was decided to issue LOIs simultaneously to all eligible applications received up to 25.09.2007. This has been recorded in a note of 12.11.2007 by the DDG (AS) in all the individual license files and thereafter approved by the Member (T) and Secretary (T).
- (ix) The then MoC&IT informed this decision to the Hon'ble PM on the same day that it was taken. He also informed him about the note of the Law Ministry and explained to him as to why it was felt to be out of context. This letter was duly considered by the Hon'ble PM. It is evident that after this date, there would have been several interactions between the Hon'ble PM, MoC&IT and MoLJ. If either of them had desired that the EGOM should consider this matter, they could have given the necessary instructions. However, neither of them ever made this suggestion and rather they fully understood the DoT's action. In fact, the MoLJ has throughout supported the stand of the DoT in all the litigation concerning this matter and also endorsed the view of the DoT that the CAG had no jurisdiction to question the policy decisions of the Government. Even in this JPC, if the then Law Minister and the MoC&IT had been called, this matter could have been clarified.
- (x) This decision to issue LOIs to eligible applications received up to 25.09.2007 was subsequently publicised through a Press Release on 10.01.2008. Some criticism has been levelled against this as being a delayed disclosure. However, this criticism misses the point that this Press Release was actually not even necessary as no new policy decision was being communicated. That the action of DoT was reasonable was accepted even by S Tel, which had initially challenged this Press Release on this issue. More importantly, it is factually incorrect to conclude that the decision to process files received up to 25.09.2007 was publicised only on 10.01.2008. Rather, this fact was known to the applicants in November and December 2007 itself. It had been extensively covered in the media. The DoT issued letters on 10.12.2007 seeking clarifications from applicants on their applications. These letters were sent only to applications received up to 25.09.2007, thus making it very clear that only these applications were being processed. All this has been explained in detail by the DoT in its correspondence with the CAG, which has unfortunately been overlooked in the Report. The following extract may be seen:

Accordingly, on 02.11.2007, Government took decision to process all the applications received up to 25.09.2007 initially. It is not true that the above decision of the Government to process all the applications received up to 25.09.2007 initially was first come to known by the applicant companies only on 10.01.2008 by way of the first Press Release as there were number of new items being published in the media about this decision of the Government in November 2007 itself. Further, after this decision, the applications received up to 25.09.2007 were scrutinised and on 10.12.2007, clarifications/information was sought from the applicant companies

in respect of all the applications received up to 25.09.2007. Therefore, on 10.12.2007 also the applicant companies who applied after 25.09.2007 were knowing fully well that for the time being only the applications received up to 25.09.2007 are being processed ...

... The interest of none of the applicant companies was compromised due to delay in formal publication of decision of the Government to process the applications which were received up to 25.09.2007 ...

... There was no need for any formal communication to the applicant companies ... the applicant companies also do not have any objection about the policy decision of the Government.

(Memo dated 03.05.2010 in DoT File No. 20-213/2008-AS-1 Vol. I, page 164)

- (xi) The policy notes were also seen by the SG, who advised that what was proposed was fair and reasonable.
- (xii) It is relevant to note that subsequently, the permission to allow FDI in the Unitech Wireless group of companies was granted by the CCEA—headed by the Hon'ble PM and in which the then Hon'ble Law Minister was a member. If any of them had misgivings about the cut-off date issue, this was the ideal occasion to bring it up. On the contrary, the fact that the FDI permission was granted shows that they have fully endorsed the decision of the DoT.

5.3 The above makes it clear that the decision to process applications received up to 25.09.2007 was a proposal of the DoT taking into account the various factors listed above. After approval by the then MoC&IT, the Hon'ble PM was informed the same day. The decision was subsequently endorsed by the then SG. While there can always be two views about any particular decision, it cannot be described as a procedural infirmity.

6. Eligibility

6.1 The report has ignored the fact that the earlier approach of the DoT was that eligibility conditions could be satisfied at any time till the grant of Lol and in some cases even after the grant of Lol. This practice has no backing in the UASL Guidelines or otherwise and was a brazen exercise of discretionary power. Mr. A. Raja was the MoC&IT who ordered that this practice cannot be continued and eligibility conditions must be satisfied on the date of application and not thereafter. He in fact made the process more stringent. He also agreed with the advice of the LF Branch to continue to use the existing Lol format, but ensured that eligibility conditions will have to be complied with as on the date of application.

6.2 The report has also not mentioned the fact that the records show that the then MoC&IT has not interfered with the examination of any file of any licensee to determine its eligibility. This examination was done by a Committee of DoT officers, constituted by the then Secretary (T), and the MoC&IT approved the decision of the officers — whether it be to grant Lol or reject the application — in each and every case. There is not one case where he tried to change the decision.

6.3 It is relevant to note that subsequently also, the issue of eligibility of the Unitech Wireless group of companies was examined by the LA (T) and it has been concluded *vide* his opinion dated 11.11.2010 that they were indeed eligible on the date of application itself. The Hon'ble Law Minister and Law Secretary were also duly apprised of this opinion. (*pages 73-83/N of DoT File No. 20-213/2008-AS-I Vol. III*)

7. First-Come-First-Served Policy

7.1 The report in para 10.45 states that “the Prime Minister was misled about the procedure decided to be followed by the Department of Telecommunications in respect of issuance of UAS licences”. This drastic conclusion has been reached without even examining the Hon’ble PM or the then MoC&IT, which is highly unfair.

7.2 This conclusion is *ex facie* unbelievable. It is in fact impossible for a Minister to misguide or mislead the Hon’ble PM, and the entire governmental machinery is there to make sure that such an eventuality does not happen. There are officials in the PMO specifically to cover each department of the Government, including the DoT.

7.3 The conclusion is also contrary to the documentary evidence, for the following reasons:

- (i) The application of the First-Come-First-Served (“**FCFS**”) principle to a situation where there are two sets of applications leading to two sets of licenses under the Indian Telegraph Act and the Indian Wireless Telegraphy Act respectively has not been properly appreciated.
- (ii) In the period 2003-07, about 51 new UAS Licenses were issued. The issue of seniority never arose because the procedure followed by the DoT was to process the applications for UASL *sequentially* in order of receipt and take up the next applicant after the earlier applicant has been given LOI. However, the DoT officials understood that the above procedure could not be followed in the 2007 scenario because, as recorded by them in the file, *“In the present scenario the number of applications is very large and therefore such sequential processing will lead to inordinate delays depriving the general public of the benefits which more competition will bring out.”* Therefore, the officers proposed that LOIs would be issued *simultaneously* to all the eligible applicants. This aspect was duly and transparently disclosed to the Hon’ble PM.
- (iii) The note of the SG, which was made available to the PM, recorded, *“Thus Government is obliged to scrutinise the pending applications and if the applicants are found eligible, to issue licenses on a first-come-first-served basis. Once an applicant becomes licensee after complying with the LOI conditions, the applicant then becomes eligible for spectrum as per the WPC guidelines”*. This is what has been followed by the DoT.
- (iv) Once the LOIs have been issued, there is no rule that can be used to *prevent* an applicant from furnishing compliances with the LOI conditions. Once the compliance is made, the license has to be signed, and the applicant is then free to go and apply for spectrum. This is exactly what is being explained in the letter dated 26.12.2007 written by the then MoC&IT.
- (v) The Report fails to appreciate that the contents of the letter dated 26.12.2007 have all been drawn from the DoT records and discussions with the then SG and EAM as revealed in their notes. The following indisputable points emerge from these documents:
 - (a) There are two separate licenses to be given and FCFS criteria is applicable to both;
 - (b) It had been decided to issue LOIs simultaneously to all eligible applicants;
 - (c) Seniority of applications did not matter earlier because only one application was processed at a time;

- (d) When LOIs were simultaneously distributed, once an LOI holder had come forward with his compliances, DoT was obliged to issue the UAS License — there was no legal or logical reason to refuse to accept those compliances and await compliance by someone else; and
- (e) This is exactly what has been communicated by Mr. A. Raja to the Hon'ble PM.
- (vi) The aforesaid letter was examined by the Hon'ble PM and discussed in the PMO in a series of notes, which show that the PM was fully aware of the procedure proposed to be followed by the DoT and also that LOIs had been issued on 10.01.2008. The notes culminate in a detailed note by the Secretary to the PM where he has described the FCFS procedure correctly. This is followed by the note of the Private Secretary to the PM, who has recorded, "*PM wants this informally shared with the Deptt. Does not want a formal communication & wants PMO to be at arms length pl.*" I am at a loss to understand what this means. The only person who could have clarified this is the Hon'ble PM. One thing is however clear: the Hon'ble PM was kept fully informed as to the earlier procedure followed by the DoT, why it was unsuitable to the 2007 scenario, and the manner in which the DoT now intended to proceed. It is impossible to conclude that he was misled in any manner.
- (vii) At best, one could understand a grievance about the FCFS policy if any applicant complained that it had not been informed about the policy or about the distribution of LOIs. But records show that this is not the case: each and every applicant was individually notified and nobody has made any such complaint. Not a single applicant has complained that it could not arrange the bank guarantees or demand drafts in time because it did not know about the distribution of LOIs. The DoT has repeatedly explained that care was taken to ensure that all applicants were notified and the second Press Release issued on 10.01.2008 was only a formality and not even required. This also has been explained in the Affidavits filed by the DoT in the High Court, which again has been overlooked in the Report.
- (viii) The decision to distribute LOIs through four counters was taken by DDG (AS) and his subordinate staff in the DoT, and this was not even informed to the MoC&IT. He was only told that LOIs had been distributed simultaneously in first-come-first-served manner.
- (ix) Moreover, when spectrum was allotted, care was taken to ensure that it was allotted on the same day to all applicants, as far as possible, thus making seniority a non-issue. This aspect also has not been considered at all in the report.

7.4 It is evident from the above, as I have stated at the outset in this Note, that the full facts have not been properly appreciated in the preparation of the report and facts have been chosen selectively and conveniently to reach a preconceived conclusion.^{#***} ***
 *** The JPC has therefore not proceeded in the manner it was required and expected to. I am therefore unable to agree with the aforesaid conclusions in the report.

7.5 I must however note the conclusion drawn in the report that the decision to not increase the entry fee for grant of new UAS Licenses and to not auction 2G spectrum was consistent with the policy objectives of the Government and the recommendations of TRAI. The so-called loss to the exchequer caused by the grant of licenses and allocation of spectrum has been the single most important factor responsible for sensationalisation of this matter, and hopefully the report of the JPC will at least set this aspect of the matter at rest. It is noteworthy that despite the erroneous manner in which the JPC proceeded, as pointed out above, at least it has been able to draw a correct conclusion on this issue.

Sd/-
 (T.R. BAALU)

[#]Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

MINUTES OF DISSENT

S/Shri Jaswant Singh, MP, Gopinath Munde*, MP,
Ravi Shankar Prasad, MP, Harin Pathak, MP,
Dharmendra Pradhan, MP and
Yashwant Sinha, MP

Introduction: circumstances that have occasioned this Note of Dissent

The Comptroller and Auditor General of India conducted a Performance Audit on the Issue of Licences and Allocation of 2G Spectrum by the Department of Telecom and submitted its report in November, 2010. The C&AG came to the conclusion that as a result of the various irregularities committed in the grant of these licences the Government had suffered a loss of Rs. 1.76 lakh crore. The submission of this report led to a huge uproar in the country and a demand by all the parties in opposition in Parliament for the constitution of a Joint Parliamentary Committee immediately to enquire into this matter. The refusal of the Government to agree to this legitimate demand led to an unprecedented stalemate in Parliament. A whole session of Parliament (the winter session of 2010) was lost as a result of this confrontation between the Government and the opposition parties. Good sense, however, dawned on the Government during the budget session of Parliament in early 2011 and this JPC was set up. However, the Government exposed its political motive when the entire period between 1998 and 2009 was included in the terms of reference of the JPC while the real scam had actually taken place during the tenure of the UPA-I. The BJP agreed to the terms of reference because it had committed no wrong and was not afraid of any kind of enquiry. Subsequent events, however, showed that we had underestimated the capacity for mischief of the Congress party. In the very first meeting of the Committee held on March 24, 2011, the Congress party members raised the issue of conflict of interest of Jaswant Singh and Yashwant Sinha who had both served as finance ministers in the Vajpayee Government. This was a total non-issue because both Houses of Parliament in their wisdom had unanimously approved the resolution moved by the Government which contained these two names and nobody had objected to their inclusion. The JPC Chairman, behaving in a most partisan fashion, however, not only allowed an ugly discussion on this issue but in the end decided to refer the matter to the Speaker, Lok Sabha. The issue was finally settled with her intervention. The Speaker ruled as follows:

"The Members of the JPC are elected by a motion moved in the House of the People, and the fact that such Members were Ministers in the earlier Cabinet, was in public knowledge. No objections were raised during their election as Members of the JPC. To raise this objection at this stage appears to be not in order because it is presumed that the Parliament, when it approved their election to the JPC, was in the know of their membership in the earlier Cabinet. The matter of conflict of interest referred to by the hon. Chairman is addressed by Rule 255 of the Rules of Procedure and Conduct of Business in Lok Sabha, and Direction 52A of the Directions by the Speaker which refers to personal, pecuniary or direct interest of the Member in a matter considered by the Committee; and the membership of the Council of Ministers during the earlier period, would not constitute any personal, pecuniary or direct interest unless such Members have some other personal, pecuniary or direct interest referred to in Direction 52A."

*Was not present in the sitting of the Committee held on 27.09.2013. In accordance with Direction 87 of the Directions by the Speaker, Lok Sabha has certified in writing that he has read the Report.

The JPC decided to call for written briefs from all the concerned ministries of the Government to begin with and also called some officials not for evidence but for briefing the Committee on the subject under examination. It must be noted that the briefing document submitted by the Department of Telecom was entirely one sided. A large number of pages in this document were devoted to the NDA period and only a few to the most important question before the JPC, namely the scam of 2008 and 2009. # ***

Witnesses were examined in chronological order starting with AV Gokak, Secretary, DOT in 1998 and an inordinately long time was spent on the examination of the witnesses relating to the period 1998-2004. # ***

As even after these brazen attempts, facts embarrassing to the Government kept coming into public view, and as with each fresh disclosure it became more and more indefensible to prevent the JPC from calling high officials and ministers of the Government, all pretense was abandoned. The JPC last met on February 12, 2013. After that not a single meeting was held to discuss the nature of the report to be prepared by the JPC for submission to Parliament. The members of the JPC were not allowed to air their views on the preparation of the draft report even to the Secretariat of the JPC. Suddenly, out of the blue, a draft report was circulated with the approval of the Chairman on April 18, 2013 and strangely enough reached the media before it reached the members of the Committee. # ***

Chapter 10 of the report deals with observations/recommendations. The irregularities committed when Sri Dayanidhi Maran was Minister for Communications including the Aircel-Maxis deal have been glossed over. Thirty-nine pages of this chapter deal with the period 1998-2004. Twenty-three pages have been devoted to the scam period of 2008 and 2009. Fourteen pages have been devoted to maligning the then C&AG and controverting his findings. The balance 15 pages have been used for making some irrelevant and pointless recommendations. The disproportionate number of pages devoted to a political offensive against the Vajpayee government and the political defence of the Manmohan Singh government clearly indicate the biased mindset of the Chairman. The nitpicking—illustrative of a compulsive determination to find something, anything that happened during the Vajpayee Government and could somehow, anyhow be called into question—contrasts with the equally compulsive determination to shut out facts that are at the every heart of the scam that had taken place in the telecom sector under the UPA government and have brought the sector to its present, sorry state.

We, the undersigned, therefore have no option but to reject the draft report in toto and submit this note of dissent.

Comments on the report of the Committee

We will first take up some of the findings in the report for the period 1998-2004:

The then Secretary Sri A.V. Gokak has been accused of deliberately ignoring the TRAI as far as ascertaining the financial health of the Telecom industry was concerned and asking the BICP instead to do the study and submit a report. This accusation is completely misplaced as

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the BICP is also an expert body of the government charged with the responsibility of making such studies. As came out during examination, the TRAI was still in a nascent stage and was not in a position to undertake such a study. Moreover, while a lot of faith has ostensibly been reposed in the TRAI's capacity as far as this matter is concerned, elsewhere in paragraph 10.19, the report does not hesitate to completely disagree with the observation of the TRAI that roll out obligations could be better fulfilled through the concept of Point of Presence. Clearly.

***by putting faith in the TRAI where it suits the government and expressing distrust in its judgment where it does not.

At the end of paragraph 10.4, the report accuses the Vajpayee government of acting in haste by showing indulgence to the defaulting operators. It goes on to add that "it would have been prudent on the part of the government to wait for the professional input from BICP before taking a decision in the matter". This is in complete contradiction to the later observation of the Committee in paragraph 10.63 where it has bent over backwards to defend the right of the government to take executive decisions. The report quotes the Ministry of Law to the effect that neither the C&AG nor the courts can question the wisdom of government policy decision unless the policy decision is patently arbitrary, discriminatory or mala fide. It quotes the opinion of the Supreme Court dated September 27, 2012 in response to a reference made by the President of India in which the Supreme Court held that "alienation of natural resources is a policy decision and the means adopted for the same are thus, Executive prerogatives".

The Committee's observation in para 10.5 that the situation then was not so alarming that it warranted the operators to panic and approach the Telecommunications Ministry repeatedly seeking relief is not warranted by the evidence before the Committee, as not only the industry but several Members of Parliament, including several Congress Members of Parliament, were also approaching the government for immediate relief to the industry.

At the end of para 10.6, the Report observes that the Department of Telecommunications abysmally failed to administer the new licensing regime which was largely at variance with the growth path visualized under the aegis of the first telecom policy. Surely, this stricture condemns the Congress party government which rule between 1994—when the National Telecom Policy was formulated—and 1996, the United Front government which ruled between 1996 and 1998 with the support of the Congress party, and only very marginally touches on the work of the Vajpayee government—the latter assumed office in March, 1998 and it started to grapple with the problems of the sector without losing time. The conclusion of the Committee is also at variance with the observation in the same sentence that cellular industry was an altogether a new experiment in this country. In fact, the report goes on to appreciate in para 10.7 the government of the day (the Vajpayee government) for viewing the ensuing developments with concern and recognizing the need to take a fresh look at the policy framework for this sector. It goes on to add "it was wisely felt that a new telecom policy framework required to facilitate India's decision becoming an IT superpower and develop a world class infrastructure in the country".

These comments are also in complete contradiction to the subsequent observations of the Committee that the proposal for relief should not have been allowed to be processed further in view of the reservations on this issue of the then Minister for Communications and the then Finance Minister. Any one who is familiar with the functioning of the government is aware of the fact that the Prime Minister and the Cabinet are the levels where final decisions are taken and this is exactly what happened in this case also; the PM considered the advice of the

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Attorney-General and directed that his advice should be followed in toto. The fact that the sector was pulled back from the brink of collapse and set on the path of growth itself demonstrates that the decisions taken in this regard were wise, far-sighted, and in the national interest.

The Vajpayee government has been taken to task for implementing the migration package when it had become a caretaker government. The report deals in detail with the correspondence between the President and the PM, the observations of the Election Commission and the order of the Delhi High Court. What it ignores completely is the fact that the PM had written back to the President stating clearly that the policy decision in this case had been taken well before the dissolution of Lok Sabha and had justified the need for its urgent implementation. The President did not pursue the matter further which he could have if he had felt #*** *** *** The Election Commission left the matter to be decided by the Delhi High Court. The Delhi High Court, as the report itself notes, passed an interim order Aug. 10, 1999 allowing the government to implement the migration package subject to the approval of the Council of Ministers after the constitution of the 13th Lok Sabha and subject to approval, if such approval was required, by Lok Sabha. After the election to the 13th Lok Sabha, the Cabinet of the new government approved the migration package and so did the Parliament. The directions of the Delhi High Court were thus fully complied with. The Committee observation therefore that the Delhi High Court had stayed the implementation of the migration packaged is factually incorrect and baffling, to say the least. We are also unable to agree with the observation in the report that the government of the day acted in haste and it would have been wiser to hold back the Cabinet decision till the constitution of a new government.

The observation in the Report at para 10.12 that the migration package led to a loss of revenue of Rs. 42,080.34 crore is laughable because it is based on nothing more than the belated guess work of the Department of Telecommunications submitted to the Committee for no other purpose than to malign the then government of Shri Vajpayee. This figure was never discussed by the Committee, no detailed examination of the issue was carried out and no opportunity was provided to the members to air their views on this issue. *Further, the author s of this spurious figure were never allowed to be cross examined by the committee members for its basis.* It is therefore nothing more than the figment of the imagination of the Department of Telecom#*** on their part to somehow put the Vajpayee government at par with the Manmohan Singh government.

Three and a half pages (paras 10.20 to 10.22) have been devoted to finding fault with the then Secretary Shri Shyamal Ghosh for allocation of additional spectrum beyond 6.2 MHz and fixing the tariff for it. The report makes much of the fact that the file for allotment of additional spectrum was approved by the Minister on the same day. There is nothing in the Rules of Business which lay down that a proposal cannot be approved the same day. In a subsequent case when the DOT wanted to take the legal advice of the Solicitor General on the press note issued by the DOT on January 10, 2008 the file was dealt with by the officials, the then Minister for Communications as well the Solicitor General in one single day though it required to travel outside the ministry to the Solicitor General and back. The report of the Committee ignores this fact completely because it does not suit the interests of the UPA government that it be pointed out. #*** *** ***

The following issues have been raised in addition with regard to allocation of additional spectrum in January 2002:

(i) Decision taken in haste:

As has been pointed out to the Committee during taking of evidence, the subject of allocation of additional spectrum had been pending with the Department ever since the TRAI

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had raised the matter in the year 2000. The Report of the Technical Committee appointed by the government had come to the Department in November 2001 and had been under examination since then. After the matter had been discussed and examined threadbare with all the relevant officers, especially Member in charge of Finance and Licensing, there was no reason to hold back the decision, particularly when there was the need to allot additional spectrum because of congestion of network and call falling. In fact, the Technical Committee itself had noted that allocation should be made 12 months before the subscriber base of 9 lakhs was reached. It was the assessment of the Department that this would be reached by early 2003. Further, although the Technical report had projected that the subscriber base of 9 lakhs would be reached after about 24 months from November 2001, the report itself projected a monthly growth rate of 5% from November 2001 which, when compounded, on a monthly basis supported the position of the Department that the subscriber figure of 9 lakhs would be reached by the beginning of 2003. Therefore, there was urgency to decide the matter without delay. It must also be noted that the orders issued in February 2002 for allocation of spectrum DID NOT IMPLY THAT ALLOCATION would be made on the same date. As it happened, the allocation was actually made on 14th July 2002 (as the Report itself mentions).

(ii) The other issue relates to loss to Government.

The policy of government was that telecom tariff should be affordable. The Report itself mentions that there was need to ensure a level playing field between WLL and Cellular Mobile service providers. This had been recommended by TRAI and endorsed by GOT-IT. Accordingly, usage charges had been fixed for CDMA spectrum upto 5 MHz at 2% of the Adjusted Gross Revenue. Cellular operators were fiercely pressing TDSAT for a level playing field. Therefore, proposing 4% usage charge upto 10 MHz was in line with this policy and was not an afterthought. In fact, spectrum usage charge beyond 10 MHz up to 15 MHz was fixed later on the same basis (5% up to 12.5 MHz and 6% upto 15 MHz). The TRAI had recommended a ceiling of 4% usage charge in 2005 on which no decision was taken by government and the usage charge fixed in February 2002 was allowed to continue even under the UPA regime. (It is continuing even now.) Therefore, there is no question of spectrum having been under-valued as it was based on the prevailing policy. Further, the so-called loss to government is based on the premise that the spectrum usage charge should have been higher; this would have meant higher cost for the operators who may not have reduced tariff in the manner they actually did not made additional investments for spreading the network. This would also have impeded achieving higher subscriber base at the rate that was actually achieved. Slower growth of the sector would have implied lower gross revenue; and, as the spectrum usage charge was linked to gross revenue, it would have resulted in lower accruals to the exchequer. Demand for telecom services has a high degree of price elasticity.

(iii) Change in stand of the Secretary.

There was no change in stand since the option of a one-time charge was in lieu of a recurring additional spectrum usage charge. The latter option was recommended after discussions with concerned officials since a recurring usage charge would be perennial in nature.

In many other matters where either a CBI investigation is going on or the matter is pending in Courts of Law, the Committee has refrained from debating the merits of the case. In this particular case, however, it has behaved in a highly biased manner and passed a judgment already in a case which is *sub judice*. This is entirely unwarranted.

In para 10.25, the Report observes that the Guidelines that were issued on 11 November, 2005 “no specific procedure for grant of new UASL was prescribed.” In para 10.27, the Report takes objection to the fact that the then Secretary, Telecom, sought clarification from the TRAI Chairman over the telephone, that the latter gave it, and that the TRAI approved the Chairman’s clarification *ex post*. The Report observes that this sets an unhealthy precedent.

The Report itself contains the complete answer to these observations. The wording of a paragraph in the TRAI recommendations—para 7.39—covered only new operators in the existing, pre-UASL regime. A clarification was, therefore, required about what had to be done in regard to applications that may be filed by new operators in the light of TRAI’s own recommendations and the decision of the Cabinet. The TRAI Chairman clarified that the principles and procedure would apply in both cases. This was entirely in accordance with what the TRAI had stated in its report, and that is how the full TRAI had no difficulty in approving what the Chairman had stated. To attach any other meaning to this innocuous clarification amounts to finding fault where none exists.

Second, there was manifest urgency. An appeal had been filed in the court against the Cabinet decision. Government was advised that the court could well, and imminently stay the implementation of the Cabinet decision. That would have thwarted the policy decision of moving to a UASL regime. As a result, not only would the growth of the sector have been slowed down, the sector would have been plunged back into the swamp of litigation and acrimony—the precise swamp from which the Cabinet wanted the sector to be lifted out. The Committee’s Report does not contain any evidence that calls these facts into question. Quite to the contrary, the Committee’s Report itself states in para 10.26, “The Committee note that with the implementation of UASL regime, the concern of the industry was adequately addressed which put an end to the then on-going litigation”.

In para 10.27, the Committee’s Report asserts that, while the Cabinet had decided to usher in the new UASL regime, it had “nowhere underscored the background which prompted the Department of Telecommunications to go ahead with issue of licences with unusual haste.

As we have noted above, an appeal was filed to stay the implementation of the decision of the Cabinet. The DoT was advised that a stay could well be given imminently. The Cabinet could not have been aware on 31.10.2003 about the stay applications as these were moved in the Supreme Court *AFTER* the Cabinet decision. The Department had to take prompt action to implement the Cabinet decision. UASL guidelines were consequently framed on 11.11.2003. It was stipulated therein that all fresh applications would be in the UASL category.

Applications for new licenses were for some of the most backward regions of the country where teledensity was very low (Orissa, North-East, Bihar, West Bengal etc.) Residents of these states, including Members of Parliament, used to frequently complain that Government was neglecting these areas. Keeping these applications pending would have redoubled the criticism.

TRAI recommendations of 27.10.2003 and Cabinet decision of 31.10.2003 enjoined that UASL regime be put into place immediately. The question of entry fee for new UASL applicants was a matter which only required a clarification from Chairman of TRAI as the intention of the Dept was to proceed cautiously within the ambit of the TRAI recommendations and the Cabinet decision of 31.10.2003 which had approved the said recommendations. The clarification of Chairman TRAI was made available in writing and formed part of the official record. Cabinet had already authorized the DOT to work out the details of the Cabinet decision with the approval of Minister of Communications. All follow up action in this matter was in accordance with this mandate and it was ensured that TRAI was adequately consulted in this regard.

In paragraph 10.66, the Report speaks of the recommendation of TRAI for a Unified License as a “path-breaking” one. It rightly says that the recommendation laid the foundations for the licensing system as it has come to exist subsequently. And it laments the fact that this path-breaking recommendation was not implemented by the subsequent UPA Government. And yet in the foregoing paragraph, the Report criticizes the NDA for promptly taking steps to implement that very recommendation.

Instead of taking an adverse View, the Government of the day needs to be complimented for speedy decision making which ensured prompt implementation of the Cabinet decision, and yet did not occasion any legal disputes. All rules and procedures were adhered to. The administrative machinery functioned with speed, efficiency and integrity to bring about reform in this complex sector. Moreover, what happened in the Department under the UPA government establishes beyond doubt that it is precisely by delaying the issue of licences that collateral objectives were pursued.

In paragraph 10.28, the Committee’s Report observes, “The Committee are, however, concerned to point out that the decision to adopt FCFS criteria for issue of UAS licences was taken in undue haste and was not based on comprehensive deliberation that merited the issue in question. The Committee, therefore, hold the view that the manner in which such an important decision was taken left a lot to be desired”.

The facts on record refute these observations. When the auction route was not to be followed, the decision to adopt the FCFS method did not require any comprehensive or extraordinary deliberation. DOT was familiar with this system. The literature of International Telecommunications Union also recognises the efficacy of the FCFS method. And it is less even than a quibble to assert that the form that was used for Basic Services was used for the UASL applicants. All that had to be done at this stage was to obtain the essential details of the applicant companies. A format for obtaining these details was available and already in use. Both the Department officials as well as applicants were well acquainted with this format. It was, therefore, entirely in order to use the format that was already in use rather than waste precious time in devising another format—one that would in any case have been similar to the one that was in fact used.

The problems that plagued the sector later, and which have occasioned prosecution now, did not arise because the FCFS method was followed, but because no method was followed: changing cut-off dates with retrospective effect; changing the list of priorities—such steps are not part of any method, much less of the FCFS method.

In paragraph 10.29, the Report states, “The Committee find it disturbing to note that no Guidelines were issued detailing the procedure to be followed for grant of UASL when initially the decision was taken on 17 November, 2003 to accept the applications similar to the one adopted for Basic Service Licences. Similarly, when the decision was taken on 24 November, 2003 to follow First-Come-First-Served as the guiding principle for grant of UASL, it was also not published for the benefit of prospective operators”.

Once again, facts refute these observations. The Guidelines issued on 11.11.2003 did mention that all fresh applications for access would be in UASL category. Applications were accepted in the order in which they were received. These were from the existing operators who wanted to spread to other telecom circles in order to become pan-India operators. (No new entrant was willing to enter the sector which was riddled with litigation and controversies.) That the decision of the Cabinet was implemented with absolute fairness is evident from the fact that, in this most litigious of sectors, no dispute was raised by any of the operators.

The observation in paragraph 10.30 is based either on a misapprehension or misrepresentation of facts. The Report states, "Prior to January, 2008, UAS licences were being issued on FCFS basis mainly as per the date of application for grant of UAS Licence in that particular service area. However, the Committee note that in one case in 2004, on two applications of different dates in Uttar Pradesh (West) service area, LOIs were issued simultaneously but the UAS licence was granted first to the later applicant".

Facts are to the contrary. M/s Tata-tele Ltd operating with CDMA technology, applied for UP (West) on 29.11.2003. They got a Letter of Intent on 17.12.2003 and a license on 30.1.2004. M/s Vodafone, operating with GSM technology, applied for UP (West) on 28.11.2003. They got a Letter of Intent on 17.12.2003 and a license on 13.2.2004. Since the two operators were operating with different technologies, there was no discrimination caused to anyone. Neither of them, nor anyone else expressed any grievance except belatedly this Committee.

Paragraph 10.31 of the Report strains to find fault with the fact that the DoT did not undertake a study itself of the financial condition of the sector; and that the incentives given by the Ministry of Finance to provide relief to the sector caused a loss to the Exchequer.

The reference to the Cabinet decision (in para 10.31) is in language that is liable to, if not designed to mislead. The decision of the Cabinet was as follows: "While there is no case for giving any compensation package to them, because of the perception that the finances of the cellular operators are strained and because of the effect these may have on financial institutions, Finance Ministry would address the difficulties of the cellular operators, if any, separately and appropriately." The decision to give relief across the board to the telecom sector was based on a clear mandate given by the Cabinet to the Finance Ministry. The decision was taken by the Finance Ministry with the approval of the Finance Minister after getting necessary inputs from the Telecom Deptt., which were given at the level of the then Telecom Minister.

About 80% of the financial benefit went to BSNL and MTNL

To criticize the decision on the presumption that the reduction in the license fee caused loss to the exchequer is to take a myopic view of the issue, and to ignore the needs of the sector. Would that not be true of every tax reduction or concession announced in successive budgets over the decades? If the Committee's logic is taken seriously then every Finance Minister of India should go to jail. What has been lost sight of is that the telecom industry was given relief whereby it could grow and thereby achieve all three objectives which were of concern to the Government at the time: a vital component of the country's infrastructure grew rapidly; in particular, areas and states that hitherto had been ill-served got the benefit of telecom services; the charges came down drastically. And, as a result of this growth, a sector which was imposing a drain of close to Rs. 20,000 crore on the Exchequer came to contribute close to Rs. 50,000 crore to the Exchequer. Unlike the decision making process adopted by the Government in 2007-08, here the decision had the mandate of the Cabinet and it had the approval of the Finance Ministry. This matter did not give rise any controversy until it was raised in the JPC. The conclusion of the Committee regarding loss caused to the exchequer is totally without warrant.

Furthermore, the observations in this paragraph are in flat contradiction to what the Report has itself stated in Para 10.61. Concerned as the Report is to defend the present Government against the strictures of the CAG, in that paragraph, the Report states that revenue is not the principal, to say nothing of its being the sole objective of Government policy in an infrastructure sector like Telecom.

This is at par with the way the Report has strained in Para 10.12 to assert that the Migration passage caused a loss of Rs. 42,080.34 crore to the Exchequer, and, when confronted the CAG's estimates of the loss caused by decisions of the UPA Government, the Report has

maintained that revenue generation is not meant to be the principal or sole objective in the Telecom sector.

Paragraphs 10.32 to 10.34 conflate the initiatives that were commenced by the NDA Government, and the failure to carry them through during the UPA regime.^{#*** **} While the Committee has tried hard to find fault in the procedures adopted for the smooth and prompt implementation of the UASL regime—for implementing the very recommendations of the TRAI which the Report itself calls “path-breaking”—the Committee has not fixed responsibility for the casual approach of the UPA Government in not implementing the Cabinet decision of 31.10.2003 in regard to Unified Licensing and Spectrum pricing even after TRAI had submitted reports on both these matters as enjoined in the TRAI recommendations of 27.10.2003 which had been accepted by the Cabinet. Moreover, the phase that was implemented in 2003/04 of the TRAI recommendations was to be only a transitional phase. The subsequent Government made this very phase into a permanent arrangement. And that is what caused the subsequent confusions and difficulties in the sector. The Report conspicuously evades the task of fixing responsibility for this dereliction.

Before we part with comments on portions of the Committee’s Report, we would like to advert to a recent affidavit that TRAI submitted to the Supreme Court. The affidavit is doubly significant—in that it is by the independent regulator of the sector, and it has been submitted during the tenure of the UPA government.

The affidavit was submitted to the Supreme Court in early 2011 as part of its hearings on *Subramaniam Swamy v. Union of India*. As party to the case, the DoT is in possession of the affidavit. It is symptomatic of its recent conduct *vis a vis* the JPC that it scrupulously refrained from drawing the attention of the JPC to this important document—a document that deals with several of the issues with which the Committee has been directly concerned. The reason for the conduct of the DoT under its current leadership is evident: the affidavit provides the complete answer to efforts evident in the Committee’s Report to find fault, some fault, *any* fault with what was done during the tenure of the NDA government. We need to draw attention to just five averments in this important affidavit of TRAI that bear on observations of the Committee.

The TRAI states explicitly that “The DoT guidelines for UASL dated 11.11.03 is consistent with TRAI recommendation of 27.10.2003 when it refers to entry fee paid by the fourth cellular operator. On 11.11.2003 the Central Government issued an addendum to NTP-99 informing its decision to issue UASL and Unified Licence. (Copy enclosed). It emphasises that ‘provision of Telecom Services at the cheapest possible rates and by the most reliable mode is the *sine qua non* for India to consolidate its position as a leading hub of communication systems.” Second, TRAI affirmed in its affidavit to the Supreme Court that “In the DoT guidelines dated 11.11.03 it was stipulated that new access services license shall be given only in the category of UASL. With this stipulation para 7.39 of TRAI recommendation dated 27.10.03 became redundant as it pertained to CMTS license”.

Third, and something that bears directly on the strenuous efforts of the Committee to find some fault with what was done under the NDA government, TRAI affidavit states, “In granting licence there was no discrimination and whoever applied was given the start up spectrum. It was an open ended policy. The Cabinet of Government of India did not object. No one questioned the policy in Court of Law. The raising of issue today is highly belated”.

[#]Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

Fourth, TRAI spelled out how the country had been greatly benefited by decisions that were taken by the NDA Government. In particular, it pointed out that "By May 2003 incoming calls had become free and the tariff of outgoing calls had come down to Rs. 3.24 per minute from Rs. 16.93 for both outgoing and incoming in 1999. The subscriber base had also grown multifold and a bigger spurt was expected. The target was set at 100 million by the end of year 2005. In this context a new entrant was also permitted to obtain a licence on the same basis as a migrant to UASL". TRAI proceeded to record that "The impact of 2003 decision was that the subscriber base increased to 149.62 million subscribers by December, 2006. The urban tele-density increased to 48% in March, 2007 and the rural tele-density, grew to 6%. The Government of India's revenue from Spectrum charges increased from 10280 cr. in 2004-05 to 20900 cr. in 2006-07. The Licence fee increased to 63600 cr. in 2006-07. This also led to more competition, there being 6-9 operators in every service area. And the tariff began matching the fixed line tariff. In the year 2006 it fell to less than Rs. 2/- per min. So there was overall growth and public interest was benefited".

And, finally, TRAI nailed how the progressive decisions taken at the time were frozen and the steps that were to follow were scuttled by the UPA Government-with results that are before all of us now. TRAI observed, "So far as fully unified licence is concerned, TRAI's recommendation of 13.01.2005 was rejected by Government on 12.07.2007. As regards the other recommendation May 2005 in the context of spectrum related issues, there has been no response".

There is no doubt whatsoever that both ministers Dayanidhi Maran and A. Raja are guilty of various acts of omission and commission which have been pointed out in the Report. Incontrovertible evidence before the Committee makes it just as evident that the Prime Minister and the Finance Minister were fully in the loop; that they were fully aware of what the two ministers were doing; that in some matters they were party to the decisions; that the Finance Minister shares responsibility for the under-pricing of the spectrum as the decision that the Cabinet took in October, 2003 placed the responsibility of fixing the price jointly on the Finance and Telecom Ministers; that he shares responsibility for the Aircell-Maxis deal for which Dayanidhi Maran is now under investigation and possible prosecution. Furthermore, the letters and file notings which have been brought on record and which are in the public domain incontrovertibly establish that the Prime Minister was kept fully informed at each step of what was being done, and what was happening. Neither the Finance Minister nor the Prime Minister can escape responsibility: they had both the constitutional obligation to prevent the loot that their colleagues in Cabinet were indulging in as well as information that this loot was taking place.

Instead of verifying facts about their role, and affixing responsibility, the sole objective of the Congress party members in the Committee, including and in particular of the Chairman has been to use every device to prevent the facts from coming on record, and to thereby shield the Prime Minister and the Finance Minister. They have pursued this singular agenda even at the cost of destroying the credibility of an institution of Parliament, namely the JPC; and incidentally, destroying the credibility of their own defence of the Finance Minister and Prime Minister.

On several occasions, other members of the Committee demanded that the Prime Minister and Finance Minister be called to state the facts as they knew them. The requests in this regard were made in writing as well as orally in several meetings of the Committee. The Chairman turned down every single one of these requests.

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To prevent the role of the Prime Minister from being exposed, the Chairman also stonewalled the demand of calling officials of the Prime Minister's Office, in particular, his then Principal Secretary, TKA Nair, and his current Principal Secretary, Pulok Chatterjee. From the various records available with the JPC it is evident that these two officials were aware of all the irregularities and cover-up operations of the telecom scams during 2004-08. Similarly, in his determination to save the Finance Minister, the Chairman scotched the demand of the members to examine regarding the irregularities that may have been committed in granting the approval to the Aircel-Maxis deal by the FIPB. This issue was diligently excluded from the agenda of every meeting of the JPC.

Truth has a habit of breaking out. To ensure that officials who did come before the JPC stuck to the same story-line, Government decided at the highest level that a note be prepared about the sequence of events that had led to the scandal. This came to be known as the Office Memorandum "seen" by then Finance Minister Pranab Mukherjee. The subsequent letter of the then FM Pranab Mukherjee to the PM of September, 2011 emphasised once again that the note was the combined effort of the Finance Ministry, the Cabinet Secretariat and the PMO and the conclusion about the role of Chidambaram was not his alone. It clearly points out that it was well within the powers of the Finance Minister to prevent events from taking the course that they did—that, in fact, the wrongs that were perpetrated could not have been done had the Finance Ministry officials been allowed to stick to the stand that they had originally taken. It pinpoints the role of the Finance Minister in agreeing with A. Raja to ensure that prices that were fixed seven years earlier be used even though the sector had grown manifold, and spectrum had become much more valuable—a decision that enabled a few companies favoured by A. Raja to rake in unconscionable windfall gains. The role of the Finance Minister is also writ large on the face of the record in facilitating companies which had secured licence and spectrum at a very cheap rate because of A. Raja's decisions to offload them at exorbitant rates to multinational companies. Even though it went into the heart of several of the issues that the JPC was examining, and even though it had been prepared on the directions of the highest levels of Government, this Office Memorandum was submitted to JPC only after it burst out in public domain. This one single document of the UPA Government fully and unambiguously nails the Finance Minister and the Prime Minister as far as their role in this scam is concerned.

So as to hush up the role of the Finance Minister, Finance Ministry never submitted the files from the Foreign Investment Promotion Board (FIPB) to the JPC. These files contained vital information about the Aircel-Maxis deal, as well as the offloading of shares by Swan, Unitech, and Shyam Telelink to multi-national companies like Etisalat, Telenor and Sistema.

Neither did the Prime Minister's Office (PMO) or the Cabinet Secretariat submit the note that the then Cabinet Secretary KM Chandrasekhar had written to the Prime Minister on 4 December, 2007. In this note the Cabinet Secretary had pointed out the rationale for raising the entry fee, and drawn attention to the fact that doing so would garner additional revenue of over Rs. 30,000 crore. This note was kept from the JPC to shield the Prime Minister. That such a note had been written came out only during the responses of KM Chandrasekhar to questions asked by #*** members of the JPC.

Before we part with these general observations pertaining to the tenure of the UPA Government, it is necessary to take note of an issue that is central to the nature of governance. Under our system, Government is a continuing entity. One of the consequences that flows from this fundamental principle is that a decision of the Cabinet stands until it is explicitly replaced by a contrary decision taken by the Cabinet. The JPC repeatedly draws attention to the

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decision the Cabinet took on 31 October, 2003, the decision that became the foundation for ushering a new regime of licensing in this vital sector. But it scrupulously averts its eyes from a central limb of the decision: namely, that the responsibility for fixing the spectrum fee was placed jointly on the Ministers of Finance and the Minister for Telecommunications. This part of the decision was never overturned by any subsequent decision of the Cabinet—neither during the tenure of the NDA, nor that of the UPA. How then can Finance Minister Chidambaram dodge responsibility for what transpired?

Tenure of Dayanidhi Maran as Telecom Minister

After the UPA Government assumed office, it constituted a Group of Ministers to examine issues relating to the Telecom Sector. Among these was the vital issue of the pricing of spectrum and the licence fee. Dayanidhi Maran maintained that these subjects fell within the exclusive domain of the Ministry of Telecommunications. Officials of the Ministry of Finance countered this claim. They pointed *inter alia* to the decision that had been taken by Cabinet on 31 October, 2003. Suddenly and mysteriously, the officials fell silent. The Prime Minister took the claim of Dayanidhi Maran at face value, and directed that the terms of reference of the GoM be altered, and pricing issues be deleted from them. In spite of what is mandated by the Government's Transaction of Business Rules, 1961, the Finance Minister went along. This is what cleared the way that A. Raja was to tread soon.

Second, in the second half of 2006, Dayanidhi Maran had the BSNL set up an illegal exchange of 323 lines to his private house in Chennai. Cables were put in place so as to connect the lines to the premises of and for the free use by the television channel that his brother owns. This free and wholly illegal service came to the notice of the CBI. The CBI wrote to the Department of Telecom in June, 2007, informing the latter of the illegal exchange. The Department just sat on the file for 44 months. In June 2011, the illegal operation became public knowledge when the details were published in a newspaper. Even then, neither the Department of Telecommunications nor any other wing of Government did anything. Could it be that all through—with all intelligence agencies at his command—the Prime Minister did not know what a Minister in his Cabinet had got done? It is only when the Supreme Court itself pressed the matter that resulted in a charge sheet being filed in October, 2013—more than six years after the investigation had been completed.

The third cause for action, and one we repeatedly demanded should be examined by the JPC, was just as blatant. Two companies of the Aircel group had been granted 14 licences. Obstacles were placed in the way. In 2006, the FIPB, presided over by the then Finance Minister, P. Chidambaram, gave approval to Maxis, a company based in Malaysia, to takeover Aircel operations. The head of the Aircel group charged that his arm had been twisted, and he had been forced to sell his companies to Maxis. Furthermore, while the sectoral cap on foreign investment in the telecom sector was 74 per cent, documents filed by Maxis with the Malaysian Stock Exchange showed that, in fact, Maxis had taken over 99.714 per cent of the companies. Third, the manifest and huge discrepancy in the valuation of the shares indicated to the gross violations of law: 74 per cent of the shares had been valued at around Rs. 4,000 crore; the remaining 26 per cent which were in the name of the Indian investor—and going by the value placed on the 74 per cent should have been valued at around Rs. 1,000 crore—were valued at a mere Rs. 180 crore. The fourth feature was equally telling. Government first maintained that FIPB had given clearance on 7 March, 2006. Once the declaration by Maxis to the Malaysian Stock Exchange burst into public view, Government switched its story and maintained that the FIPB gave its approval only in October, 2006. The two approval letters did not accord with each other!

When this issue was raised in the Rajya Sabha in May, 2012, P. Chidambaram, who had presided over the clearance by FIPB and who had by now shifted to the Home Ministry, admitted that two aspects of the deal—the takeover of almost 100 per cent of the shares of the Indian companies, and the discrepancies in the valuation of shares—were violations of law and that “the law can be set in motion on these two things”. During the debate, the House was assured that the then Finance Minister, Pranab Mukherjee, would address these issues in the course of his reply. He never did.

Members of the JPC repeatedly demanded that the Aircel-Maxis deal be examined.

The CBI in turn limited its investigation to the alleged arm-twisting of the Chairman of Aircel. In particular, when the names of P. Chidambaram and persons close to him surfaced in public in connection with the transactions, the CBI put its probe into the deepest of freezers. In April, 2013, the Supreme Court was compelled to direct the CBI to conclude its investigation, and to cover the clearances given by the FIPB.

In spite of the manifest facts that cried out for inquiry, and in spite of the repeated demands of members, the JPC was blocked from examining the transactions and decisions relating to the takeover of these Indian companies by a foreign company.

Even at the cost of repetition we must state once again that both the Prime Minister and the Finance Minister were fully aware of the goings on in the Department of Telecom during the tenure of Dayanidhi Maran and A. Raja. Press reports, letters of Members of Parliament, communications from Cabinet colleagues, Prime Minister’s own letter to Raja dated 2nd November, 2007, all pointed only in one direction—that a scam was taking place in the telecom sector. Both the Prime Minister and the Finance Minister showed concern, appeared to take a stand through various communications and notings on the files but meekly surrendered to the demands of Dayanidhi Maran and A. Raja subsequently. The Committee’s conclusion in paragraph 10.45 that the Prime Minister was misled is completely unwarranted on the basis of the evidence on record before the Committee and without the examination of the relevant witnesses including the Prime Minister and the Finance Minister. In his detailed written statement submitted to the JPC on 22nd April, 2013, A. Raja in paragraph 4.49 says “As stated above, in January, 2008 also I had meetings with the Hon’ble PM in Cabinet meetings and otherwise and updated him of the situation. I went ahead with the grant of Lols only after informing the PM and obtaining his assent. It is therefore abundantly clear that the FCFS policy of the DoT was formulated keeping in view the unprecedented situation that the DoT was faced with. It was formulated based on the advice of the then SG and duly discussed with the EAM and communicated to the PM also”. At paragraph 4.62, Raja says “Since it has often been alleged that I “misled” the Hon’ble PM, I wish to deal with this issue here. I would first of all point out that this allegation has been made by the CBI, without even recording the statement of the Hon’ble PM! On what basis do they then say that he was misled? I do hope that the JPC will not commit the same blunder: if they wish to draw any conclusions on this issue, it is mandatory to record both my statement and the statement of the Hon’ble PM”. Without examining Raja and the Prime Minister the JPC unfortunately has committed the same blunder as the CBI and come to the conclusion that the PM was misled.

At paragraph 8.11, Raja says “I took no unilateral decisions. Every major decision of mine was taken after consultation first with the DoT officers and thereafter with the Hon’ble PM, FM

[#]Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

and EAM. All issues including entry fee, non-auction of spectrum, FCFS, processing of applications till 25.09.2007, etc., were personally discussed by me with the Hon'ble PM and the DoT proceeded only thereafter".

Thus, A. Raja had kept the Prime Minister fully informed through letters and personal discussions of all that he was doing or planning to do. The Prime Minister did nothing except to acknowledge the letters and when the licences were finally issued he told the PMO to maintain arms length. If Raja was right why would the PM insist on maintaining arms length; and if Raja was wrong why would not the PM and the PMO intervene and correct the wrong. These questions have no answers. His defence, during his intervention in Rajya Sabha on 24 Feb., 2011, where he said that on the issue of pricing of spectrum he went along because the two Ministers namely, the Telecom Minister and the Finance Minister had agreed is hardly convincing. The Prime Minister must be aware that by accepting the recommendation he became a party to a wrong decision. Clearly, the Prime Minister has no defence.

The case of Chidambaram is even queerer. It is interesting to note that to begin with, the Ministry of Finance was clearly of the view that: (1) the entry fee for telecom licences as fixed in 2001 needed to be revised; (2) the initial spectrum of 4.4 MHz which was bundled with licence had also to be charged; (3) additional spectrum beyond 4.4 MHz had to be charged at market rates; and (4) Ministry of Finance should be allowed to have its say with regard to fixing of spectrum prices. Strangely enough the Ministry of Finance gave up on all these points one by one and surrendered to the DoT completely in the meeting presided over by the Prime Minister on 4th July, 2008.

Chidambaram is also guilty of condoning FEMA violation by M/s. SWAN and M/s. UNITECH after they had been issued telecom licences by A. Raja. A. Raja had met the Prime Minister on 4th Nov., 2008, along with Finance Minister Chidambaram and followed up his meeting with a letter to the Prime Minister on 7th Nov., 2008. In this letter, A. Raja says "during the discussion you advised me to meet the Press to explain the policy and rules being adopted in granting new licences and spectrum allotment in accordance with the TRAI recommendations. Accordingly, I addressed the issues in the Press Conference today and explained related issues including dilution of shares as explained by the Finance Minister, of M/s. SWAN and M/s. UNITECH who are the new licencees". The Enforcement Directorate works directly under the Finance Minister. It has filed cases against these companies for FEMA violation. How did Chidambaram, therefore, clear the deal without checking up the matter with the Enforcement Directorate unless he himself was fully party to the scam.

The 2G scam raises some serious issues of governance. As stated earlier, Government is a continuous entity. It does not end with the exit of one Government and installation of a new one. Decisions taken by earlier Governments are valid unless they are set aside by a later Government. In the case of Telecom, the UPA Government claims to have followed the policies formulated during the NDA Government. Yet, it did not. The Cabinet decision of 31st October, 2003, taken during the NDA rule had clearly stipulated that the issue of spectrum pricing would be decided jointly by the Telecom Minister and the Finance Minister. Yet, when Dayanidhi Maran took a stand that he would not allow the Finance Minister to intervene in this matter, the Prime Minister meekly surrendered to him and overruled a Cabinet decision without any reference to the Cabinet. Secondly, in the same Cabinet meeting of 31.10.2003, it was also decided that the existing system of licensing was to be replaced by a unified licensing/automatic authorization regime. This was to be achieved in a two stage process with the unified access regime for basic and cellular services in the first phase which was to be implemented immediately. The second phase was a shift to a fully Unified Licensing Regime the main features of which were — (1) such a licence was to include all telecom services like cellular, fixed,

national long distance, international long distance and internet, (2) It was meant to cover all geographical areas in the country instead of being confined to specified circles, and (3) It was supposed to be technology neutral and the service provider could choose either GSM or CDMA or WLL or a combination of all the three as his preferred technology. The implementation of this decision was not contingent on the passage of the Communication Convergence Bill as has been wrongly concluded in the Report. The TRAI was required to make its recommendation on USL within six months. The TRAI report was received after some delay in two batches on 13th Jan., 2005 and 30th MAY, 2005. For some mysterious reason, the recommendations of the TRAI were rejected by the Government of India after two and a half years by a three line letter dated 12th July, 2007, and the UASL which was a transitional arrangement was allowed to continue indefinitely. Once again a decision taken by the Cabinet was undone without any reference to the Cabinet. Thirdly, can the Prime Minister of India remain a mute spectator to all the wrong which was being committed in his Government and take the plea of "arms length" after he had allowed the wrong to be done.

Can the Prime Minister glibly say that he agreed to a proposal only because his two Ministers of Telecom and Finance had agreed to it? Is not the Prime Minister supposed to apply his mind to a grave issue of policy?

We have no hesitation in concluding, therefore, that the Prime Minister and the Finance Minister are equally if not more guilty in the 2G scam than Dayanidhi Maran and A. Raja since they carried a higher responsibility and it was their duty to prevent a scam of this horrendous proportion from taking place. The Prime Minister has failed to live up to the constitutional duty assigned to him.

The role of the CBI in this whole matter leaves much to be desired. First of all, it took an inordinately long time to start its investigation in the matter even after a reference was received by it from the Vigilance Commission. In fact, it sat on that reference for nearly a year. It was only after the Supreme Court took up the case that the CBI stirred itself and started investigating the matter. We also noticed that the CBI was selective in its approach *i.e.* it chose to question Jaswant Singh and Arun Shourie without any evidence against them but completely ignored the role of the Prime Minister, the Finance Minister and the officials of the PMO when there were heaps of evidence against them. When questioned by us in the Committee on the non-examination of the PM, FM and the PMO officials the Director, CBI and his team had no satisfactory answer. The 2G investigations prove once again how the present Government is using the CBI as its political tool.

The telecom revolution launched by the Vajpayee Government was a game changer and a great success story. While it helped the common man enormously on the one hand, on the other it added unprecedented value to the telecom licences as well as to spectrum. The C&AG has in his audit report captured this development and based his calculation of presumptive loss of Rs 1.76 lakh crore on this value addition. We entirely agree with him and see no reason why reams of paper should be wasted in challenging that finding.

Conclusion

The massive irregularity in the allocation of 2G licences and spectrum was one of the biggest scams of Independent India, which has deeply distressed the country, caused unprecedented outrage and dented the global image of India. The Supreme Court of India was constrained to cancel all the 122 licences granted during the period of the scam in the most unfair manner in violation of norms in the course of this scam. The criminal trial is going on. It was in this background that the country was looking forward to the JPC findings so that the

entire infirmity in this decision making process, the lack of accountability and the omissions and commissions at the higher political levels could also be unearthed and established. It is regretted that in spite of voluminous evidence on record before the Committee, the final report chose not to fix responsibility of the Prime Minister, the Prime Minister's Office, the Finance Minister and many others. Our note of dissent is designed to ensure that the political accountability of this massive scam is clearly determined and fixed against all the guilty so that it serves as a lesson for the future.

We must also state that a Joint Parliamentary Committee is a time-honoured, effective and transparent mechanism to enforce constitutional accountability of the political executive to Parliament under our system of democracy. It is the highest body Parliament constitutes to enquire into a matter of grave national importance. Its members may represent various political parties but are expected to perform their duties in the Committee in a fair, fearless and non-partisan manner. The Chairman of the JPC like the Presiding Officers of the two Houses of Parliament is supposed to function in a totally objective and impartial manner to lay bare the facts, uncover the truth and fix political responsibility for lapses, if any by the political executive. In our parliamentary history most JPCs have maintained these high traditions; only one JPC, namely the JPC to enquire into the Bofors scam, made a mockery of the task assigned to it and brought ignominy to Parliament. #***

***It will go down in history as a complete fiasco and parties will have to think twice before demanding a JPC in future.

Sd/-
(JASWANT SINGH)

Sd/-
(GOPINATH MUNDE)

Sd/-
(RAVI SHANKAR PRASAD)

Sd/-
(HARIN PATHAK)

Sd/-
(DHARMENDRA PRADHAN)

Sd/-
(YASHWANT SINHA)

Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

MINUTE OF DISSENT

—Shri Kalyan Banerjee, MP

I do not agree with your draft report. The report is perverse since valuable evidences came into the Committee were not considered at all. The report speaks itself but important personalities like the Hon'ble Prime Minister, Finance Minister etc. have kept untouched. The essential documents were not given to members of the Committee. # ***

Sd./-
(KALYAN BANERJEE)

Expunged as per orders of Chairman under Direction 91(1) of the Directions by the Speaker, Lok Sabha and Rule 303(5) of the Rules of Procedure and Conduct of Business in Lok Sabha.

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ANNEXURE I

GUIDELINES FOR ISSUE OF LICENCE FOR BASIC SERVICE

**NO. 10-2/2000 BS H
GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS
DEPARTMENT OF TELECOMMUNICATIONS
LICENSING CELL (BASIC SERVICE GROUP)
SANCHAR BHAVAN, NEW DELHI 110001**

Dated, the 25th January, 2001

The New Telecom Policy' 99 envisaged the opening up of the basic telephone service. It has been decided to open the Basic Telephone Service without any restriction on the number of operators. Following are the broad guidelines for grant of Licence for Basic Telephone Service in India:

1. The applicant must be an Indian company, registered under the Indian Companies Act, 1956.
2. The applicant company shall submit the application in the prescribed Application form separately for each Telecom Circle.
3. The applicant company can apply for Licence in more than one telecom circle subject to fulfilment of all the conditions of entry.
4. Licences shall be issued without any restriction on the number of entrants for provision of basic telephone service in a telecom Circle.
5. The licence for Basic Telecom Service Operator shall be issued on non-exclusive basis, for a period of 20 years, extendable by 10 years at one time, within the territorial jurisdiction of a licensed telecom circle.
6. The total foreign equity in the applicant company must not exceed 49% at any time during the entire licence period. Investment in the equity of the applicant company by an NRI/OCB/International Funding Agencies will be counted towards its foreign equity. In this regard the applicant company shall submit a certificate from the competent authority to the effect that total foreign equity in the applicant company does not exceed 49%.
7. The applicant company shall have a minimum paid up equity capital of the amount indicated in Annex-I for the respective Circles on the date of the application and shall submit the best proof thereof along with the application for licence.
8. The promoters of applicant company shall have a combined net-worth of amount indicated in Annex-I. The net-worth of only those promoters shall be counted who have at least 10% equity stake in the total equity of the company. Here net-worth shall mean as the sum total, in Indian Rupees, of paid up equity capital and free reserves of qualified promoters. While counting net-worth the foreign currency shall be converted into Indian Rupees at the prevalent rate on the date of the application as indicated by the Reserve Bank of India.

9. The constituent(s) having at least 30% of total equity in the applicant company must have an experience of telecom sector and the proof thereof shall be attached with the Application for licence.
10. The applicant company shall also submit business plan along with its funding arrangement for financing the project in each Circle separately.
11. The applicant company shall submit, along with the application, the detailed Roll out plan indicating the names of Short Distance Charging Areas (SDCAs) in a licensed telecom circle for coverage in four phases. The list of telecom circles and SDCAs are given in Annex-II for the purpose of illustration.
12. The application shall be decided, so far as practicable, within 15 days of the submission of the application and the applicant company shall be informed accordingly. In case the applicant is found to be eligible for grant of licence for basic service, the applicant shall be required to deposit Entry Fee and submit Bank Guarantees/other documents and sign the licence agreement within a period of three months from the date of issue of the letter failing which the offer of grant of licence shall stand withdrawn at the expiry of permitted period.
13. In case the applicant is found to be not eligible for the grant of licence for basic service the applicant shall be informed accordingly. Thereafter the applicant is permitted to file a fresh application if so desired.
14. The applicant company shall pay one time prescribed Entry Fee (as specified in Annexure-I), before signing the Licence Agreement, in the form of Demand Draft/Pay Order from a Scheduled Bank payable at New Delhi in favour of Pay & Accounts Officer (Headquarter), Department of Telecom, New Delhi. *There will be no separate entry fee payable for allocation and usage of spectrum in a service area for deploying Wireless Access Systems.* Also, before signing the Licence Agreement, three separate Performance Bank Guarantees (PBGs) shall have to be submitted for amounts equivalent to 20%, 30% and 50% of total amount of stipulated Performance Bank Guarantee and valid for a period of 3 years, 5 years and 7 years respectively as detailed in Annexure-I. These PBGs will be released on completion of II, III & IV phase in the manner described therein subject to fulfilling the network Roll out obligations by establishing Point of Presence in SDCAs as specified in Annex-I. However, all new licences should cover 80% SDCAs individually but beyond 80% SDCAs in a Service Area may be covered jointly by new licensees apart from BSNL. Provided always, it will be the obligation of all new licensees to ensure coverage of 100% SDCAs and bank guarantees after 4th phase will be released only after ensuring fulfilment of this condition.
15. Any shortfall below the percentage of network coverage — Phase II, III & IV will result in encashment/forfeiture of the particular BG relatable to that phase. There will be no carry forward of the unfulfilled network obligation from one phase to another after expiry of that particular period.
16. The applicant company shall submit Financial Bank Guarantee (FBG) of amount equal to entry fee subject to maximum of Rs. 20 crores for each Circle separately one year after the date of signing the licence agreement or one month before the commencement of service whichever is earlier in tdm prescribed Proforma given in the Licence Agreement. Initially, FBG shall be valid for a period of six months and shall be renewed from time to time for such amount as may be directed by the Licensor.

17. In addition to entry fee described above, the licence fee (a) 12% 10% & 8% respectively of the annual gross revenue shall be payable for the three categories of telecom circles A, B & C as described in Annexure-I. An additional revenue share of 2% of Annual Gross Revenue earned from WLL subscribers shall be levied as spectrum charge for allocation of 5 plus 5 MHz in paired band in 800-900 MHz band in a complete Service Area (not city-wise) for wireless subscriber access system. This will include royalty for spectrum of 5x5 MHz as well as the licence fee for the base station and subscriber terminal (hand held or fixed). The same principle shall be followed for spectrum charges in 1800/1900 MHz band.
18. Basic Service Operator shall be allowed to provide mobility to its subscribers with Wireless Access Systems limited within the local area i.e. Short Distance Charging Area (SDCA) in which the subscriber is registered. While deploying such systems, the operator has to follow numbering plan of that Short Distance Charging Area (SDCA) and it should not be possible to authenticate and work with the subscriber terminal equipment in SDCAs other than in which it is registered. The system shall also be engineered so as to ensure that hand over of subscriber does not take place from one SDCA to another SDCA while communicating. Further, the operator shall ensure that the Radio Transmitters may be located and established at a distance of 10 KMs from the international border of India, and such radio transmitters will work in such a fashion that any signal or signals, emanating therefrom, fade out when nearing or about to cross international border and also become unusable within a reasonable distance across such border.
19. Provided further that the fee/royalty for the use or spectrum and possession of wireless telegraphy equipment for point to point radio link, shall be separately payable as per the details and prescription of Wireless Planning & Coordination Wing, Department of Telecom., Ministry of Communications, The fee/royalty for the use of spectrum/possession of wireless telegraphy equipment for point to point radio link, depends upon various factors such as frequency, hop and link length, area of operation and other related aspects.
20. The dues/fees/royalties for the use of spectrum/possession of Point to Point Wireless Telegraphy equipment as indicated in para 19 shall be separately securitised by furnishing FBG of amount equal to such dues/fees, royalties for use of spectrum/possession of Point to Point. Wireless Telegraphy equipment and valid for a period of one year renewable from time to time till final clearance of all such dues.
21. Change in the name of the applicant Licensee company as the case may be, shall be permitted in accordance with the provisions under the Indian Companies Act, 1956.
22. Basic Service Operator can provide all types of services except those for which a separate licence is required. *However, the Cellular Mobile Service Operators may also be permitted to provide fixed phones based on their GSM network infrastructure in the licensed Service Area. The Basic Service Operator will charge the tariff including for WLL subscribers for services as per the TRAI Tariff orders/regulations/directions/determinations issued in this regard from time to time. The LICENSEE shall also fulfil requirements regarding publication of tariffs, notifications and provision of information as directed by TRAI through its orders/regulations/directions issued from time to time as per the provisions of TRAI Act, 1997. Presently calls by WLL subscribers may be charged @Rs. 1.20 per unit call. Rental for WLL subscribers shall be as fixed by TRAI.*

23. Licensee shall make its own arrangements for all infrastructures involved in providing the service and shall be solely responsible for installation networking and operation of necessary equipment and systems, treatment of subscriber complaints, issue or bills to its subscribers, collection of its component of revenue, attending to claims and damages arising out of his operations.
24. The applicant company shall make its own arrangements for Right of Way (ROW). However, the Central Government, has issued necessary notification conferring the requisite powers upon the licensee for the purposes of placing telegraph lines under Part: III of the Indian Telegraph Act, 1885, Provided that non-availability of the ROW or delay in getting permission/clearance from any agency shall not be construed or taken as a reason for non-fulfilment of the Rollout obligations.
25. Licensee shall use any type of network equipment, including circuit and/or packet switches, wireless and/or optical fibre in local loop that meet the relevant International Telecommunication Union (ITU)/ Telecommunication Engineering Centre (TEC) standards. The mode of ownership of subscribers' terminal equipment will be at the option of the subscriber. In case of new technologies, where no standards have been determined, The Licensee will seek the approval of the Licensors before deploying them and in such cases the standards specified by TEC/ITU or such technologies which are successfully in use internationally for at least one year continuously for a subscriber base of one lakh, shall be preferred for adoption.
26. For wireless operations in subscriber access network, the frequencies shall be allocated by WPC Wing from the designated bands prescribed in National Frequency Allocation Plan — 2000. (NFAP-2000). However, the frequency in GSM band of 890-915 MHz paired with 935-960 MHz and 1710-1785 MHz paired with 1805-1880 MHz will not be allocated under any circumstances to the Licensees. *For Wireless Access Systems in local area, not more than 5+5 MHz in 824-844 MHz paired with 869-889 MHz band shall be allocated to any Basic Service Operator including the existing ones on first come first served basis. The same principle shall be followed for allocation of frequency in 1880-1900 MHz band for Micro cellular architect based system.*
27. In case of provision of bandwidth by the Basic Service Operator through the satellite media, the Licensee shall abide by the prevalent Government orders, directions or regulations on the subject like satellite communication policy, V-SAT policy etc.
28. For use of space segment and setting up of the Earth Station etc., the Basic Telecom Service Provider shall directly coordinate with and obtain clearance from Network Operations and Control Centre (NOCC), apart from obtaining SACFA clearance. The clearance from other authorities shall also be obtained by Basic Telecom Service Provider.
29. The Basic Service Operator shall register demand/request for telephone connection without any discrimination from any individual or legal person, at any place in the licensed Circle/Service Area and provide the service, unless otherwise directed by the Licensors or TRAI as the case may be. The Basic Service Operator shall not in any manner discriminate between subscribers and provide service on the same commercial principle and shall be required to maintain a transparent, open to inspection, waiting list. Licensors shall have the right to impose suitable penalty, not limited to a financial penalty, apart from any other actions for breach of this condition. The Basic Service Operator shall launch the service on commercial basis only after commencement of registration in the manner prescribed. Before commencement of service in an area, the LICENSEE shall notify and publicize the address where any subscriber can register demand/request for telephone connection. Any change of this address shall be duly notified by the LICENSEE.

30. LICENSEE shall independently provide all emergency and public utility services viz. 100, 101, 102, etc. for its subscribers including directory information services with names and addresses of subscribers.
31. LICENSEE shall be free to carry intra-circle long distance traffic. However subject to the technical feasibility the subscriber of the intra-circle long distance calls, shall have to be given the choice to use the network of other Basic Service Provider in the same service area. Basic Service Provider can also make mutual agreements with National Long Distance Operators for carrying intra-circle long distance traffic.
32. *The Basic Service Operator will ensure adherence to the National Fundamental Plan (describing numbering and routing plan as well as transmission plan) issued by Department of Telecom and technical standards as prescribed by LICENSOR or TRAI, from time to time in this respect. In case of providing choice of Long Distance Operator, the equipment shall support the selection facilities such as dynamic selection or pre-selection as per prevailing regulation, direction, order or determination issued by Licensor or TRAI on the subject.*
33. Basic service providers shall interconnect with National Long Distance (NLD) service providers through suitable arrangements/agreements whereby the subscribers could have a free choice to make inter-circle/international long distance calls through NLD service provider. For international long distance call, the basic service operator shall access international long distance operator through national long distance operator only. Similarly, inter-circle leased lines are to be provided wherever demanded by suitable mutual agreements/arrangements with NLD Service Providers.
34. Direct Inter-connectivity among all service providers in a service area is permitted. *The number of points of inter-connection (POIs) of Cellular Mobile Service Operators with Basic Service Operators shall be as per mutual agreement subject to compliance of prevailing determination, regulation or direction issued by TRAI under the TRAI Act, 1997.*
35. Inter-connection between the networks of different service providers shall be as per national standards of CCS No. 7 issued from time to time by Telecom Engineering Centre (TEC). However, if situation so arises, inter-connection with R2MF signalling may be permitted by LICENSOR with mutual agreement of Basic Service Operators.
36. The basic service LICENSEE may enter into suitable arrangements with other service providers to negotiate Inter-connection Agreements whereby the inter-connected networks will provide the following:
 - (a) To connect, and keep connected, to their Applicable Systems.
 - (b) To establish and maintain such one or more Points of Inter-connect as are reasonably required and are of sufficient capacity and in sufficient numbers to enable transmission and reception of the messages by means of the Applicable Systems.
 - (c) To meet all reasonable demands for the transmission and reception of messages between the interconnected systems.
37. The terms and conditions of inter-connection including standard inter-faces, points of inter-connection and technical aspects will be as mutually agreed between the service providers, subject to compliance of prevailing regulations, directions and determinations issued by TRAI under TRAI Act, 1997.

38. The Inter-connection Tests with network of other Service Provider may be carried out by mutual arrangement. The Inter-connection Tests schedule shall be mutually agreed. Adequate time, not less than 30 days, will be given by the Licensee for these tests. Service will be commissioned after obtaining clearance from licensor after examination of report for successful completion of such inter-connection tests.
39. The Basic Service Licensee shall for the purpose of providing of the service install own equipment so as to be compatible with other service/Access providers, equipment to which the basic service Licensee's Applicable Systems are intended for inter-connection.
40. The Basic Service Licensee shall comply with any order or direction or determination or regulation issued by TRAI under the TRAI Act, 1997, as amended from time to time.
41. The charges for access or inter-connection with other networks shall be based on mutual agreements between the service providers subject to compliance of any determination, regulations, orders or directions issued from time to time by TRAI under TRAI Act, 1997.
42. The Basic Service Licensee shall operate and maintain the licensed Network conforming to Quality of Service standards to be mutually agreed between the service providers in respect of Network-Network Inter-face subject to such other directions as the Licensor or TRAI may give from time to time. Failure on part of any licensee or his franchisee to adhere to the quality of service stipulations by TRAI and standards of TEC prescribed for network to network inter-face, shall be taken adverse note against the licensee.
43. In the interests of security, suitable monitoring equipment as may be provided for each type of system used will be provided by the licensee for monitoring as and when required by Licensor.
44. The network resources including the cost of upgrading/modifying inter-connecting networks to meet the service requirements of SERVICE will be provided by service provider seeking inter-connection. However mutually negotiated sharing arrangements for cost of upgrading/modifying inter-connecting networks between the service providers shall be permitted.
45. Licensee can appoint franchisees for provision of last mile linkages including suitable rural exchanges to provide service. However, all responsibilities for ensuring compliance of terms & conditions of the licence shall vest with the Licensee. Further, the terms of franchise agreement between licensee and his franchisee shall be settled mutually by negotiation between the two parties involved but such agreement shall not contain anything contrary to the terms & conditions of the Licence.
46. An assignment or transfer of the licence shall be permitted subject to the fulfillment of entry conditions in respect of networth, paid up equity capital, experience criteria and competition being not compromised in the service area. Any assignment or transfer will not be a ground for extension of the licensee's period and it will be for the balance period of the licence on same terms & conditions. However resale of the local loop facilities to third party shall not be permitted.
47. The written consent permitting transfer or assignment of licence, can also be granted by Licensor on payment of prescribed amount in accordance with the terms & conditions and procedures described in Tripartite Agreement, if duly executed amongst Licensor, Licensee & Lenders.

48. The LICENSEE shall not normally employ bulk encryption equipment in its network. However, if any encryption equipment is used and connected to the LICENSEE's network, then it must have prior evaluation and written approval of the LICENSOR.
49. The LICENSEE shall provide necessary facilities depending upon the specific situation at the relevant time to the Government to counteract espionage, subversive act, sabotage or any other unlawful activity. The LICENSEE shall make available on demand to the Authority authorized by the LICENSOR, full access to the switching centers, transmission centers, routes, etc. for technical scrutiny and for inspection which can include the visual inspection or an operational inspection. All foreign personnel likely to be deployed by the LICENSEE for installation, operation and maintenance or the LICENSEE's network shall have, prior to their deployment, the security clearance by the Government of India. The security clearance will be obtained from the Ministry of Home Affairs, Government of India, who will follow standard procedure in the matter. The LICENSEE shall ensure protection of privacy of communication and ensure that unauthorized interception of messages does not take place.
50. LICENSOR shall have the right to take over the SERVICE, equipment and networks of the LICENSEE or revoke/terminate/suspend the LICENCE either in part or in whole of the Service area in the interest of national security or in case of emergency or war or low intensity conflict or any other eventuality in public interest as declared by the Government of India. Any specific orders or direction from the Government issued under such conditions shall be immediately applicable to the LICENSEE without loss of time and shall be strictly complied with. Further, the LICENSOR reserves the right to keep any area out of the operation zone of the service if implications of security so require. Provided any taking over or suspension of licence, issuance of an order and exclusion of an area, as described above shall neither be a ground of extension of licence period or expansion of area in different corner or reduction of duly payable fee.
51. LICENSOR reserves the right to modify these guidelines or incorporate new guidelines considered necessary in the interest of national security, public interest and for proper conduct of telecommunications.
52. LICENSEE will ensure that the Telecommunication installation carried out by it should not become a safety hazard and is not in contravention of any statute, rule or regulation and public policy.
53. The LICENSEE shall take measures to prevent an objectionable, obscene, unauthorised or any other content, or harmful and unlawful messages or communications infringing upon copyright, intellectual property, etc., in any form, from being carried on his network, inconsistent with the legal framework of the country. Once specific instances of such infringement are reported to the LICENSEE by the Authority, the LICENSEE shall ensure without fail that the carriage of such material on his network is prevented immediately. The LICENSEE is obliged to provide, without any delay, the tracing facility to trace origin or content of nuisance, obnoxious or malicious calls, messages or communications transported through his equipment and network. Any Damages arising out of default on the part of LICENSEE in his regard shall be sole liability by the licensee. In case any confidential information is divulged to the LICENSEE for proper implementation of an Agreement, it shall be binding on the Licensee and its employees and servants to maintain its secrecy and confidentiality.

54. The LICENSOR or its authorised representative shall have a right to inspect the sites used for extending the Service. The LICENSOR shall, in particular but not limited to, have an access to leased lines, junctions, terminating inter-faces, hardware/software, memories of semiconductor, magnetic and optical varieties, wired or wireless options, distribution frames, and conduct the performance test including to enter into dialogue with the system through input/output devices or terminals. The LICENSEE will provide the necessary facilities for continuous monitoring of the system, as required by the Licensor or its authorised representative(s). The LICENSOR will ordinarily carry out all inspections after reasonable notice except in circumstances where giving such a notice will defeat the very purpose of the inspection. In such event, an inspection shall be undertaken without prior notice.
55. The applicant company shall pay a processing fee along with the application of Rs. 15,000/- in the form of Demand Draft/Pay Order from a Schedule Bank payable at New Delhi issued in the name of Pay & Accounts Officer (Headquarter) DOT and the same shall not be refunded for any reason whatsoever.
56. The outlines of terms and conditions applicable to the licence for basic service are given in the draft Licence Agreement and the comments will be invited from the interested parties before finalisation by the Law Ministry.
57. Applications are to be submitted to the Assistant Director General (BS-II), Department of Telecommunications, Room No. 622, Sanchar Bhavan, 20 Ashok Road, New Delhi-110001.

ELIGIBILITY REQUIREMENTS AND LICENCE FEE

Telecom Circles	Net worth requirement (Rs. crores)	Paid-up Equity required (Rs. crores)	Entry fee (Rs. crores)	Performance Bank Guarantee (Rs. crores)				% of revenue as licence fee
				20% BG1	30% BG2	50% BG3	100% 1+2+3	
Category A Circles								
Andhra Pradesh	1000	100	35	28	42	70	140	12%
Delhi	1000	100	50	40	60	100	200	12%
Gujarat	1000	100	40	32	48	80	160	12%
Karnataka	1000	100	35	28	42	70	140	12%
Maharashtra (including Mumbai & Goa)	1000	100	115	92	138	230	460	12%
Tamil Nadu (Including Chennai)	1000	100	50	40	60	100	200	12%
Category B Circles								
Haryana	700	70	10	8	12	20	40	10%
Kerala	700	70	20	16	24	40	80	10%
Madhya Pradesh (including Chhattisgarh)	1000	100	20	16	24	40	80	10%
Punjab	700	70	20	16	24	40	80	10%
Rajasthan	1000	100	20	16	24	40	80	10%
Uttar Pradesh (West) (including Uttaranchal)	1000	100	15	12	18	30	60	10%
Uttar Pradesh (East)	1000	100	15	12	18	30	60	10%
West Bengal (including Calcutta)	1000	100	25	20	30	50	100	10%
Category C Circles								
Andaman & Nicobar	20	2	1	0.8	1.2	2	4	8%
Assam	500	50	5	4	6	10	20	8%
Bihar (including Jharkhand)	500	50	10	8	12	20	40	8%
Himachal Pradesh	200	20	2	1.6	2.4	4	8	8%
Jammu & Kashmir	200	20	2	1.6	2.4	4	8	8%
North-East	200	20	2	1.6	2.4	4	8	8%
Odisha	500	50	5	4	6	10	20	8%

Roll out Obligations

Phase	Time period for completion from effective date of licence agreement	Cumulative % of coverage in terms of Point of Presence to be achieved at SDCA level at the end of each phase	% of performance guarantee that can be released on fulfillment of obligations shown under column 3
I	2 Years	15%	–
II	3 Years	40%	20%
III	5 Years	80%	30%
IV	7 Years	100%	50%

ANNEXURE II

NOTE OF SHRI SHYAMAL GHOSH DATED 16 FEBRUARY 2001 ON RECTIFICATION OF DEFICIENCIES IN APPLICATIONS FOR GRANT OF BTS LICENCES

(From pre-page)

I have discussed this matter with Member (F) and Member (P). As per the guidelines, the application should be examined in the context of the entry parameters prescribed in the guidelines. A detailed checklist on this account should be formulated. In the event there are any deficiencies in any application, then with the approval of Member (P) and Member (F), a letter should be sent to the applicant to rectify the deficiencies within a reasonable period of time say of about **30 days**. In the event the deficiencies are not rectified within the prescribed time or the party has not sought extension of this time for valid reasons, then the question of rejection of the application would have to be decided for which the file should be submitted to the Chairman (TC). If the deficiencies are rectified in all respects and the party is eligible to be considered for giving a licence, the file should be submitted to Minister through Chairman (TC) for approval.

2. Since a large number of applications have been received it is suggested that once the checklist is prepared, DDG(LF) and DDG(BS) should meet and record a note of the action proposed to be taken keeping in view the above guidelines. That note should be submitted through Member (P)/Member (F) for those cases where rectification of deficiencies is required. The applications found to be complete in all respects may also be discussed at this meeting and proposals put up individually on files for obtaining the appropriate approval as indicated above. Since we had indicated that we would respond to these applications in a time-bound manner of about 15 days, the above exercise should be completed immediately.

3. In view of the above position, there is no need to set up any separate Committee for this purpose.

Sd/-

(Shyamal Ghosh)
16.2.2001

Member (F)

Member (P)

DDG (BS)

ANNEXURE III

NOTE DATED 16 JANUARY, 2002 REGARDING GRANT OF EXTENSION OF VALIDITY OF LOIS FOR BTS LICENCES

PUC at 252/c is a letter dated 31st December 2001 from M/s. Tata Teleservices Ltd. regarding the Letters of Intent dated March 26, 2001 for provision of Basic Telephone Service in the service areas of Maharashtra, Punjab, Haryana, Kerala and Rajasthan.

2. The extended validity of the said 5 LOIs as per approval at 10/N has expired on 31st December 2001 but the company could not sign the licence agreements against these LOIs within this period upto 31.12.2001 due to its preoccupation with implementation of already signed five Basic Telephone Service licences of Delhi, Gujarat, Karnataka, Tamil Nadu and Andhra Pradesh.

3. The company plans to expand basic services in Maharashtra, Punjab and Haryana subsequently in a phased manner after signing the licence agreements against the LOIs of these three Circles. However, it wishes to relinquish the LOIs for Kerala and Rajasthan for which it proposes to apply afresh later on.

4. In view of the above it is proposed to consider extension of validity of the LOIs dated March 26, 2001 upto 31st March 2002 as requested for the Service Areas of Maharashtra, Punjab and Haryana whereas the LOIs dated March 26, 2001 for the Service Areas of Kerala and Rajasthan are proposed to be considered for cancellation.

5. Proposal in para 4 is submitted for consideration and approval please.

Sd/-

(ARVIND CHAWLA)
Director (BS-II)

It is found to be more than a year as
applications were submitted in Jan 2001.
2. As requested LOI for Kerala & Rajasthan
may be treated as cancelled.
3. The request for extension of validity
may not be agreed to.
submitted pl. approval. P. K. Karthi
4/1/2002

Chairman (TC)

Hon'ble MOS (C)

Hon'b1e MOC:

We may cancel the LOIs for the service areas of Kerala and Rajasthan as requested by the company. As regards Maharashtra, Punjab and Haryana, while it is true that we should not keep the LOIs open indefinitely but since we have permitted unrestricted entry in Basic Services, there should be no objection in granting extension as requested for these three service areas up to 31st March 2002 stipulating that this would be the last extension.

Sd/-

(Shyamal Ghosh)
7.1.2002

ANNEXURE IV

ADDENDUM TO LETTER OF INTENT REGARDING AWARD OF LICENCE TO PROVIDE BTS DATED 4 MAY, 2001

File No. 10-1/2001-BS.II
Government of India
Ministry of Communications
Department of Telecommunications
Licensing Cell (Basic Service Group)
Sanchar Bhavan, New Delhi-110001

4th May, 2001

ADDENDUM

Addendum to DOT Letters of Intent dated March 26, 2001 regarding award of licence to provide Basic Telephone Service in U.P. (East), Delhi, Punjab, Karnataka, Kerala, Haryana, J. and K., Rajasthan, Bihar, Maharashtra, U.P. (West), Andhra Pradesh, West Bengal, Madhya Pradesh, Tamil Nadu, Himachal Pradesh, Orissa, Andaman and Nicobar service areas.

The undersigned has been directed to convey the following on the subject:—

- (a) The words "including Amendment thereof" may be added after the words "guidelines announced on 25.1.2001" in the last line of para 1.
- (b) The existing para 3 may be read as para 4 and the new para 3 may be added as follows:

3. In addition to above, the following conditions shall also be complied with before signing the Licence Agreement in case the applicant company or promoter/partner thereof as associate/sister concern is holding licence in terms of para 2 (iii) above:

- (i) Furnishing of an unconditional and unequivocal undertaking in the form of an indemnity bond (in the prescribed format) to guarantee compliance for fulfilling the pending roll out obligations without any reservation or doviation, otherwise indemnify the Licensor of the costs involved.
- (ii) Submission of an additional performance bank guarantee (PBG), valid for two years (in prescribed format), of a sum equivalent to total of various PBGs stipulated in different Licence Agreements having unfulfilled roll out obligations. However, in respect of existing Basic Telephone Service Licence, the figure of Rupees fifty crores shall be added for this purpose.

Provided that the additional PBG will be submitted only on the first occasion of grant of the licence irrespective of the number of licences for different type of telecom services.

(In case the above-mentioned indemnity bond and additional Performance Bank Guarantee have already been submitted, the proof thereof may be provided.)

The other contents of the subject mentioned letter shall remain unchanged.

Sd/-
(Arvind Chawla)
Director (BS-II)

To,
M/s. Reliance Communications Pvt.Ltd.

RELEVANT PORTION OF THE MAJORITY JUDGMENT OF TDSAT DATED 8 AUGUST, 2003

4.11 The relevant portion of the majority judgment is extracted below:

"67. While considering the level playing field issue, it is necessary to keep in view the character and the features of the two services, namely the Cellular and WLL (M), the obligation cast on these two categories of service providers, the area of their operation, their customer segment as well as their revenue earning potentialKeeping these distinct features of the two categories of service in view it is equally important to correct the imbalance by ensuring level playing field. First and foremost it is important to ensure that mobility in the case of WLL (M) service remains restricted to SDCA and no handover from one SDCA to another is allowed under any circumstance. It should be possible to ensure this through application of appropriate software.

68. We have carefully appraised all the documents and arguments preferred and there is no doubt in our mind that entry of Basic Service Operators with Limited Mobility services has affected the Cellular Mobile Service Providers in an area where competition hitherto was limited. However, we have seen no patent illegality in the action of the Government and have also noted the various reliefs granted to the CMSPs by the Government in order to level the playing field conditions. The Cheaper alternative offered by Limited Mobility Service, even though not exactly Substituting all that fully mobile services can and do offer, has certainly introduced an unsettling element in the Cellular Mobile Industry, particularly in the Metro Cellular areas.....In this context, we have not found the reasons given by the TRAI for not recommending any additional entry fee for this service as convincing enough as this is an enormous value added service over the fixed service, which the Basic Service Operators have been providing. In the meanwhile, one cannot fail to notice the fact that the customer base of both the CMSPs and Basic Service Operators offering WLL (M) has expanded enormously ever since the decision taken by the Government on 25.01.2001. Since it is a value addition to WLL service which has a definite impact on the playing field conditions, we feel that there is enough justification for imposing additional entry fee over and above what they are paying as required under the basic service license agreement. Further basic service operators are presently entitled to allocation of frequency spectrum for WLL technologies for which they are required to pay under DoT letter dated 25th January, 2001 an additional revenue share of 2% of annual gross revenue earned from WLL subscribers as spectrum charge. Since, we have already noted that WLL (M) is a value addition to the WLL service for operation of which on a large scale there would be a need for additional spectrum we would suggest the Government may allocate additional spectrum for WLL(M) service. The cell operators, are also paying 2% as spectrum usage charge. Hence, we are not suggesting any revision on the higher side of the spectrum charge presently being paid by WLL(M) service operators. However, there would be a case for levying additional spectrum charge for WLL(M) service over and above what is being paid at present if allocation of additional spectrum becomes a necessity for operation of this service on a large scale as also for

improving the quality of service. The modality for determining additional entry fee may be examined and recommended by the Telecom Regulator (TRAI) by following a transparent process with due consultation with all the concerned stakeholders, The same method may be followed in case additional spectrum is made available. Further, some relief should be given to the cell operators in regard to the points of interconnection and whether these points should go beyond Level I and Level II TAX up to Tandem Exchange level may be considered by the TRAI. In regard to retention of 5% access charges which has been allowed to cellular operators there is a case for increasing this percentage to a reasonable level. Higher percentage in this regard could be recommended by the Telecom Regulator after due and comprehensive consideration of the issue in a transparent manner."

TRAI LETTER DATED 14 AUGUST, 2003 REGARDING VIOLATION OF
LICENCE CONDITIONS OF LIMITED MOBILITY WITHIN
SDCA BY BASIC SERVICE OPERATOR

PRADIP BAIJAL
Chairman
TELECOM REGULATORY AUTHORITY OF INDIA



D.O.No. F No. 101-8/2003-MN
August 14, 2003

Dear Shri Vaish,

Various stakeholders have represented to TRAI regarding the offer of multiple registration/roaming service/call forwarding by the Basic Service Operators (BSOs). In their representation to TRAI, the stakeholders have mentioned that BSOs are offering effectively both intra-circle as well as inter-circle roaming service like facility to its WLL(M) consumers by using multiple registration combined with call forwarding facility, while in terms of stipulations in the license agreement, a subscriber to WLL(M) service is mandated to remain continued within the SDCA in which a person has been registered. The stakeholders have represented that if the WLL mobile subscriber can make calls while outside his registered SDCA and if he can receive calls made on his original number while he is outside the registered SDCA, then he is availing of roaming like services and the provision of such a service is illegal under WLL(M). One complainant has given specific subscriber numbers of a service provider who are availing of such roaming facility. This complaint was investigated by the Authority.

2. As per Clause 2.2 (c)(i) of BSO's license agreement, "The LICENSEE is allowed to provide mobility to its subscribers with Wireless Access Systems but limited to the local area *i.e.* Short Distance Charging Area (SDCA) in which the subscriber is registered. While deploying such systems, the LICENSEE has to follow the numbering plan of the respective Short Distance Charging Area (SDCA) within which the service is provided and it should not be possible to authenticate and work with the subscriber terminal equipment in SDCAs other than the one in which it is registered. The system shall also be so engineered to ensure that handover of subscriber does not take place from one SDCA to another SDCA while communicating."

3. The comments of the basic service operator were sought on the issue. As per the BSO, the above mentioned clause of license agreement obliges them to:

- (a) restrict mobility of the subscriber to the SDCA in which the subscriber is registered;
- (b) follow the numbering plan of the respective SDCA within which the service is provided;
- (c) not authenticate the subscriber terminal equipment in SDCAs other than the one in which it is registered;
- (d) ensure that handover of subscriber does not take place from one SDCA to another SDCA While communicating.

They contend that they are meeting all these conditions of license. Further, as per them, there is no restriction imposed by the license in:

- (a) registering a subscriber in more than one SDCA,
- (b) registering a Subscriber Terminal Equipment in more than one SDCA,
- (c) transferring/forwarding calls to other numbers.

4. A strict legal interpretation of license conditions mentioned above would apparently indicate that license conditions cast upon the BSOs the responsibility to meet only four conditions that have been mentioned in Paragraph 3 *i.e.* in terms of the license conditions multiple registration appears to be compliant. However, it is important to note the intention of these license conditions. The whole concept behind permitting mobility within SDCA was that this service does not become a Cellular Mobile Service and retains its distinct characteristic of 'limited mobility.'

5. The Authority is of the view that with the facility of call forwarding—which is entirely permissible, and multiple registration—with no limit on the number of SDCAs, they are in fact achieving functionality that is similar to roaming facility and this violates the spirit of the Government's decision, in line with the recommendations of TRAI that the licensee is allowed to provide mobility to its subscribers with Wireless Access Systems but limited to the local area *i.e.* Short Distance Charging Area (SDCA) in which the subscriber is registered and it should not be possible to authenticate and work with the subscriber terminal equipment (handset) in SDCAs other than in which the one is registered. Call forwarding combined with multiple registration if permitted, would therefore, result in by-pass of the motive and spirit in which the license conditions were stipulated.

6. Incidentally, as per the majority judgement of the Hon'ble TDSAT dated 8th August, 2003 (in the case of COAI & Others Vs. Union of India & Others), it is necessary to ensure that the mobility in the case of WLL(M) service remains restricted to SDCA and no hand-over from one SDCA to another is allowed under any circumstance. The Hon'ble TDSAT has further held that the WLL service would be restricted to the SDCA in which they are registered.

7. Considering the implications of combined effect of multiple registration and inter-SDCA Call forwarding and also keeping in mind the above TDSAT ruling, it is recommended that the licensor issues clarificatory order/amendment to BSO's license agreement, which prohibits multiple registration or inter-SDCA Call forwarding to and from WLL(M) subscribers or both so that the basic service license conditions of limited mobility within SDCA is not violated by any Basic Service Operator under any circumstance.

Best Regards

Your Sincerely

Sd/-

(Pradip Baijal)

Shri Vinod Vaish
Secretary
Department of Telecommunications
Sanchar Bhavan
New Delhi-110 001.

ANNEXURE VII

DEPARTMENT OF TELECOMMUNICATIONS ORDER ON ALLOCATION
OF ADDITIONAL CELLULAR RADIO FREQUENCY SPECTRUM TO
THE CELLULAR MOBILE TELEPHONE SERVICE (CMTS)
PROVIDERS DATED 1 FEBRUARY, 2002

Ministry of Communications
Department of Telecommunications
WPC Wing

No. L-14041/06/2000-NTG

Dated: 1.2.2002

ORDER

Subject: Allocation of additional Cellular Radio Frequency Spectrum to the Cellular Mobile Telephone Service (CMTS) Providers.

In order to meet the requirements of growth of subscribers, it has been decided to assign additional spectrum upto 1.8 Mhz. + 1.8 Mhz. to the CMTS operators, Any operator may apply for allotment of additional spectrum after reaching a customer base of 4 lakh or more under a license in a service area. after which the process of allotment would be initiated, however, actual assignment of the spectrum would be made, subject to availability and coordination on case to case basis, after a customer base of 5 lakh or more has been reached in the service area. This additional assignment will be beyond already allocated spectrum of 6.2 Mhz. + 6.2 Mhz. The additional spectrum of 1.8 Mhz. + 1.8 Mhz. would be assigned in 1800 Mhz. Band.

2. The cellular licensees are to pay spectrum charge with effect from 1.8.99 on revenue share basis at the rate of 2% of Adjusted Gross Revenue (AGR) for spectrum upto 4.4 Mhz. + 4.4 Mhz. and 3% of AGR for spectrum upto 6.2 Mhz. + 6.2 Mhz.

3. Further, for this additional specitrum of 1.8 Mhz. + 1.8 Mhz., if assigned for any one or more places in a Service Area, beyond 6.2 Mhz. + 6.2 Mhz. an additional charge of 1% of AGR will be levied. Thus, the total spectrum charge to be paid by such operators would be 4% of AGR from the Service in the respective Service Area. This spectrum charge of 4% of AGR would also cover allocation of further spectrum, which may become possible to allocate in future subject to availability, to add up to a total spectrum allocation not exceeding 10 Mhz. + 10 Mhz. per operator in a Service Area. Such additional allocation could be considered only after a suitable subscriber base as may be prescribed, is reached.

4. This order is issued in partial modification to the order of even number dated 22nd September, 2001; other terms and conditions of the said order shall remain unchanged.

Sd/-

(R.K. Srivastava)
Engineer

Copy to:

1. All concerned
2. Cellular Operator Associations of India (COAI)
3. Cellular Service Providers

ANNEXURE VIII

GUIDELINES FOR UNIFIED ACCESS (BASIC & CELLULAR) SERVICES LICENCE DATED 11 NOVEMBER, 2003

Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhawan, 20 Ashoka Road, New Delhi-110 001

No.808-26/2003-VAS

Dated the 11th November, 2003

Subject. Guidelines for Unified Access (Basic & Cellular) Services Licence.

Given the central aim of NTP-99 to ensure rapid expansion of teledensity; given the unprecedented expansion of telecom services that competition has brought about; given the steep reductions in tariffs that competition has ensured; given the fact that advances in technologies erase distinctions imposed by earlier licensing systems; given the fact that even more rapid advances in technologies are imminent; given the steep reduction in costs of providing telecom services; given the rapid convergence of tariffs for wireless services; given the fact that the provision of such services at the cheapest possible rates and by the most reliable mode is the *sine qua non* for India to consolidate its position as a leading hub of Communications systems, Information Technology, IT enabled services, and of establishing itself as a leader in new disciplines such as, bio-informatics and bio-technology; given the recommendations of TRAI in this regard; Government, in the public interest in general and consumer interest in particular and for the proper conduct of telegraphs and telecommunications services, has decided to move towards a Unified Access Services Licensing regime. As a first step, as recommended by TRAI, Basic and Cellular services shall be unified within the service area. In pursuance of this decision, the following shall be the broad Guidelines for the Unified Access Services License:

- (i) The existing operators shall have an option to continue under the present licensing regime (with present terms & conditions) or migrate to new Unified Access Services Licence (UASL) in the existing service areas, with the existing allocated/contracted spectrum.
- (ii) The license fee, service area, rollout obligations and performance bank guarantee under the Unified Access Services Licence will be the same as for Fourth Cellular Mobile Service Providers (CMSPs).
- (iii) The service providers migrating to Unified Access Services Licence will continue to provide wireless services in already allocated/contracted spectrum and no additional spectrum will be allotted under the migration process for Unified Access Services Licence.
- (iv) In addition to services permissible under current licences, Cellular Mobile Service Providers (CMSPs) may also offer limited mobility facility existing within Short Distance Charging Area (SDCA) as permitted to Basic Services Providers at appropriate tariffs through concepts such as home-zone operations, etc.

- (v) The Unified Access service providers are free to use any technology without any restriction.
- (vi) No additional entry fee shall be charged from CMSPs for migration to UASL. For Basic Service Operators (BSOs), the entry fee for migration to the Unified Access Services Licence for a Service Area shall be equal to the entry fee paid by the Fourth Cellular Operator for that Service Area, or the entry fee paid by the BSO itself, whichever is higher. While applying for migration to UASL, the BSO will pay the difference between the said entry fee for UASL and the entry fee already paid by it.
- (vii) Notwithstanding anything stated in para (vi) above, no additional entry fee will be paid by the existing Basic Service Providers where no Fourth CMSP had bid despite repeated attempts.
- (viii) Those Basic Service Operators who do not wish to migrate to the full mobility regime, would only be required to pay the additional fee for Wireless in Local Loop (M), with mobility confined strictly within Short Distance Charging Area, as prescribed separately.
- (ix) Some of the Basic Service Licensees have provided following features/facilities to their subscribers:
 - (a) Over the air activation/authentication of the subscriber wireless access terminal outside one SDCA by pressing/punching certain keys/numbers such as *444N;
 - (b) Use of the same subscriber wireless access terminal in more than one SDCA;
 - (c) Multiple registration or temporary subscription facilities in more than one SDCA using the same subscriber terminal in wireless access systems.

In such cases of migration to Unified Access Services Licence, the Basic Service Licensees shall in addition to the Entry Fee based on the principles stated in para (vi) and (vii) above, pay till the date of payment from the date of their having signed the Basic Service Licence agreement, a penal interest @ 5% above Prime Lending Rate (PLR) of State Bank of India prevalent on the day the payment became due, *i.e.* the date they signed the Licence Agreement. The interest shall be compounded monthly and a part of the month shall be reckoned as a full month for the purposes of calculation of interest.

- (x) The Service Areas for Unified Access Services Licence will be as per the existing Cellular Mobile Telephone Service Licences. BSO wishing to migrate to UASL will be permitted to operate in the service area in which it is already operating. It is, however, clarified that BSOs in Delhi, Haryana and UP (West) service areas on migration to UASL, will have service area as that of CMSP in Delhi, Haryana and UP (West) service areas respectively. Since the service area for the Unified Access Service Licensees will be as per existing CMSPs, existing BSOs in Maharashtra, Tamil Nadu and West Bengal service areas will be required to hold two unified licenses (one for Mumbai Metro city and the other for the rest of Maharashtra and so on).
- (xi) The existing BSOs after migration to Unified Access Licensing Regime may offer full mobility; however, they will be required to offer limited mobility service also for such customers who so desire.
- (xii) A total of additional Entry Fee to be paid by existing Basic Service Operators in respect of each of its service area for migration to UASL is given at Annexure-I.
- (xiii) Request for migration to UASL shall be made in writing by the concerned service provider. The payment of additional Entry Fee and penal interest, if any, is to be made along with and not later than the date of such request in writing for migration to Unified Access Services Licence.

- (xiv) If on verification Department of Telecommunications comes to the conclusion that the entire amount due for migration to UASL has not been paid by the applicant it shall be intimated to the applicant to pay the difference. The concerned applicant will be bound to pay the said difference in full within 3 working days from the date of receipt of the demand; failing this the application will be rejected and the amounts paid by the applicant, if any, shall be refunded within a period of 15 days from the date of receipt of the demand from DoT. However, no interest shall be payable by DoT for the amounts deposited for migration to UASL. While applying for migration to UASL the existing licensee shall also certify as hereunder:

"I have carefully read the guidelines for providing Unified Access Services Licence, I have complied and/or agree to fully comply with the terms and conditions therein."
- (xv) Consequent upon migration, the Licence will be termed as Unified Access Services Licence. The relevant applicable conditions of the existing licence agreements will get modified to the extent of the conditions stated above. The amended Licence shall be set out in detail separately.
- (xvi) The LICENSOR reserves the right to modify these Guidelines or incorporate new Guidelines considered necessary in the interest of national security, public interest, consumer interest and for the proper conduct of telegraph/services.
- (xvii) *With the issue of these Guidelines, all applications for new Access Services Licence shall be in the category of Unified Access Services Licence.*

Annexure-I

Additional Entry Fee to be paid by the existing Basic Service Operators for migration to Unified Access Services Licence:

Sl. No.	Name of the Operator	Service Area of BSO	Date of signing of licence agreements	Entry Fee paid by BSO (Rs. in crores)	Entry Fee paid by 4th Cellular Operator (Rs. in crores)	Additional Entry Fee to be paid for migration to UASL (Rs. in crores)
1	2	3	4	5	6	7
1.	Reliance infocom Ltd.	Rajasthan	20.7.2001	20	32.25	12.25
		UP (East)	20.7.2001	15	45.25	30.25
		Maharashtra	20.7.2001		189+203.66*	
				115	392.66	277.66
		Karnataka	20.7.2001	35	206.83	171.83
		Punjab	20.7.2001	20	151.75	131.75
		A.P.	20.7.2001	35	103.01	68.01
		Haryana	20.7.2001	10	21.46	11.46
		Kerala	20.7.2001	20	40.54	20.54
		UP(West)	20.7.2001	15	30.55	15.55
		West Bengal	20.7.2001		0+78.01*	
				25	78.01	53.01
		M.P.	20.7.2001	20	17.4501	0
		Bihar	20.7.2001	10		
		Himachal	20.7.2001	2	1.1	0
		Odisha	20.7.2001	5		
		Tamil Nadu	26.9.2001		79+154*	
				50	233	183
		Delhi	20.7.2001	50	170.7	120.7
		A and N**	20.7.2001	1		0

1	2	3	4	5	6	7
2.	RTL	Gujarat	18.3.1997	179.0859030	109.01	0
3.	Tata Teleservices Ltd.	Gujarat	31.8.2001	40	109.01	69.01
		Karnataka	31.8.2001	35	206.83	171.83
		A.P.	4.11.1997	161.47(old)	103.01	0
		Tamil Nadu	31.8.2001		79+154*	
				50	233	183
		Delhi	31.8.2001	50	170.7	120.7
4.	TTL (Mah.) Ltd.	Maharashtra	31.8.2001		189+203.66*	-
				532.55(old)	392.66	0
5.	Bharti Telenet Ltd.	Karnataka	29.10.2001	35	206.83	171.83
		Haryana	8.10.2001	10	21.46	11.46
		MP	28.2.1997	35.33(old)	17.4501	0
		Tamil Nadu	29.10.2001	50	79+154*	
					233	183
		Delhi	29.10.2001	50	170.7	120.7
6.	Shyam Telelink	Rajasthan	4.3.1998	29.29(old)	32.25	2.96
7.	HFCL Infotel Ltd.	Punjab	7.11.1997	177.59(old)	151.75	0

* For BSOs in MH, WB and TN the entry fee of fourth cellular MH+Mumbai, WB+Kolkata and TN+Chennai has been taken.

** Now A and N is a part of WB service area for cellular.
NSE.

ANNEXURE IX

PRESS RELEASE DATED 11 NOVEMBER, 2003 ANNOUNCING GUIDELINES FOR UNIFIED ACCESS (BASIC & CELLULAR) SERVICES LICENCE

**Government of India
Ministry of Communications
Department of Telecommunications**

PRESS NOTE

Subject: Guidelines for Unified Access Services Licences.

The Department of Telecom today announced Guidelines for Unified Access Services Licence for Basic and Cellular Service Operators.

Earlier, the Group of Ministers on Telecom Matters had recommended acceptance of the recommendations of the TRAI for migration of the existing Basic and Cellular Service Licences to Unified Access Services Licence Regime on immediate basis, based on the consultation process followed by TRAI in the matter. The recommendations of the Group of Ministers were approved by the Cabinet on 31.10.2003.

The Department of Telecom also issued an Addendum to the New Telecom Policy-1999 to include two additional categories of Licences for Telecom Services, viz. Unified Licence for all Telecom Services and Unified Access Services Licence for Basic and Cellular Service in a Service Area. The details are contained in the Annexure and have also been put on DoT Website www.dotindia.com.

Sd/-

**(A.S. Verma)
Director (VAS-II)**

F.No. 808-26/2003-VAS

Dated the 11th November, 2003.

Forwarded to the Director (PR). Ministry of Communications & IT, New Delhi for giving wide publicity to the contents of the above Press Note.

Copy to:

1. All the concerned Ministries.
2. Telecom Regulatory Authority of India, New Delhi.
3. Cellular Operators Association of India.
4. Association of Basic Telephone Operators.

ANNEXURE X

LETTER DATED 14 NOVEMBER, 2003 OF THE CHAIRMAN, TELECOM
REGULATORY AUTHORITY OF INDIA TO THE SECRETARY,
DEPARTMENT OF TELECOMMUNICATIONS

PRADIP BAIJAL
Chairman
Telecom Regulatory Authority of India



November 14, 2003

My dear Vinod,

Kindly refer our telecon regarding Entry Fee of the new Unified Licensee.

2. In this regard I am reproducing para 7.18, 7.19 and 7.20 of our recommendations:—

- 7.18 *The 3rd alternative is that the existing entry fee of the fourth Cellular Operator would be the entry fee in the new Unified Access Licensing Regime. BSOs would pay the difference of the fourth CMSP's existing entry fee and the entry fee paid by them. It may be recalled that, even in the past, entry to cellular and basic services has been on fixed fee basis, e.g. for metros in the case of cellular and the second BSO.*
- 7.19 *It is recommended that the 3rd alternative as mentioned in para 7.18 above may be accepted for fixing the entry fee for migration to Unified Access Licensing regime for Basic Cellular services at the circle level.*
- 7.20 *In service areas where there is no fourth operator-viz. Bihar, Orissa, W.B. & A.N. and Assam, etc.—no extra entry fee would be charged from the existing operators migrating to the Unified Access Licensing Regime, since in these areas operators did not see a potential mobile market at the time of repeated bidding for the 4th cellular operator.*

It would be clear from the above that the entry fee of the new Unified Licensee would be the entry fee of the 4th cellular operator and in service areas where there is no 4th operator—the entry fee of the existing BSO fixed by the Government (based on TRAI's recommendations). Incidentally, in such States where no 4th cellular operator came in, the entry fee for BSOs was fixed by the Government and as per our recommendations in para 7.20 above, it will be the same for new or existing unified licensee.

With regards,

Yours Sincerely,
Sd/-
(Pradip Baijal)

Shri Vinod Vaish,
Secretary,
Department of Telecommunications
Sanchar Bhavan,
New Delhi-110001.

LETTER DATED 19 NOVEMBER, 2003 OF SECRETARY, TELECOM
REGULATORY AUTHORITY OF INDIA TO THE SENIOR
DEPUTY DIRECTOR GENERAL (VAS), DEPARTMENT
OF TELECOMMUNICATIONS

HARSHA VARDHANA SINGH
SECRETARY-CUM-PRINCIPAL ADVISOR

भारतीय दूरसंचार विनियामक प्राधिकरण
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TELECOM REGULATORY AUTHORITY OF INDIA
A-2/14, SAFDARJUNG ENCLAVE, NEW DELHI
E-mail: trai07@bol.net.in, Phone: 26167448, Fax: 91-11

D.O.No. 101-35/2003-MN

Date: November 19, 2003

Subject: Recommendation of the TRAI on Issues relating to Spectrum.

Dear Shri Gupta,

Please refer to TRAI's recommendations dated 27.10.2003, Para 7.30 of these recommendations states that efficient utilisation of spectrum by all service providers is of utmost concern to the Regulator. TRAI has further mentioned that it will shortly provide its recommendations on efficient utilization of spectrum, spectrum pricing, availability and spectrum allocation, procedures. DOT vide their letter No. 848-439/2003-VAS/5 dated 17.11.2003 has asked TRAI to submit its opinion on spectrum related issues at the earliest

2. In para 7.31 of TRAI recommendations, it was mentioned that while operators may be issued unified access license they should continue to provide wireless services in the already allocated/contracted spectrum and no additional spectrum would be allocated only because of migration. It has been further recommended that there shall be no change in the spectrum allocation procedure as part of migration process. Thus the principle is that the prevailing spectrum allocation procedures should continue till fresh Guidelines on this matter are issued by the DOT. This principle can be applied in the interim period for the new entrants also.

3. Thus, in the interim period before the TRAI recommendations on efficient utilization of spectrum etc. become available, if the licensor has to issue any unified access license to new applicants, the TRAI feels that spectrum to these licensees may be given as per the existing terms and conditions relating to spectrum in the respective license agreement. This implies that even though unified access license is service and technology neutral, spectrum under the new unified license for offering mobile services may be allocated in the interim period on the technology used for offering these services. For example, if a new Unified Access provider is offering wireless mobile service using GSM technology then the allocation/contracted spectrum in existing cellular mobile license may be provided and for those using CDMA technology, spectrum allocation as per the provisions of basic service operators license can be considered.

4. Regarding entry fee to new Unified Access licensees, the matter has already been clarified *vide* Chairman TRAI's D.O. letter dated 14th November, 2003 (copy enclosed).

5. This is issued with approval of Authority.

Sd/-

(Harsha Vardhana Singh)
Secretary-cum-Principal Advisor

Shri J.R. Gupta
Sr. DDG (VAS)
DOT
Sanchar Bhawan,
New Delhi.

ANNEXURE XII

DECISION BY TELECOM REGULATORY AUTHORITY OF INDIA FOR RECOMMENDING AN ENTRY FEE OF RS. 1 CRORE FOR UNIVERSAL ACCESS SERVICE LICENCE IN THE WEST BENGAL CIRCLE

TELECOM REGULATORY AUTHORITY OF INDIA

Minutes of the Authority Meeting No. 19/2003-04 held on 24th November, 2003 at 1700 Hrs. and continued on 3rd December, 2003.

The following were present:

1. Shri Pradip Baijal, Chairperson
2. Dr. D.P.S. Seth, Member
3. Shri P.K. Sarma, Member
4. Dr. Arvind Virmani, Member (Part-time)
5. Dr. H.V. Singh, Secretary-cum-Principal Adviser
6. Dr. S.K. Hajela, Sr. Consultant
7. Mrs. Indu Liberhan, Principal Adviser (FA)
8. Shri R.K. Bhatnagar, Adviser (FN)
9. Shri Rajendra Singh, Advisor (MN)
10. Shri S.N. Gupta, Advisor (CN)
11. Shri Sudhir Gupta, Adviser (QOS)

Two Additional items were included in the Agenda of the Authority Meeting, one related to Clarification of the Recommendation on Unified Access License, and the other related to the issue of Ombudsman for Consumer Complaints.

Agenda Item No. 1: Minutes of the previous Authority Meeting.

The Authority confirmed the Minutes.

Agenda Item No. 2: Action Taken Notes on Pending Items of the Minutes of the Authority Meetings.

The Authority noted the statement on Action Taken Notes.

Agenda Item No. 3: Decisions taken by the Authority in informal meetings or on files.

The authority look note of the decisions taken during informal meetings or on files and approved them.

Addl. Agenda Item No. 1: Clarification regarding entry fee for the new Unified Access Licensee in West Bengal (Excluding Kolkata).

The Authority noted that DOT has sought clarifications regarding entry for the new Unified Access Licensee in West Bengal (excluding Kolkata). The Authority took note that the matter has been addressed in Clause 7.24 of the TRAI's Recommendations dated 27th October, 2003. The relevant extract of Clause 7.24 of the TRAI's Recommendations and Unified Licensing Regime dated 27th October, 2003 is as follows:

"Since the service area for unified licensee will be as per existing CMSPs, it means existing BSOs in Maharashtra, Tamil Nadu and West Bengal will get two unified licenses (One for Metro city Mumbai and the other for the rest of Maharashtra and so on). The difference of entry fee to be paid by them will be divided between Metro city license and the rest of the circle on *pro rata* basis of entry fee of the 4th cellular operators.

In West Bengal, there is no forth cellular operator, so while migrating to Unified Access Licensing Regime, the BSO in West Bengal will not pay any extra entry fee. The same BSO in Kolkata, if it so desires, will have a separate Unified Access Licensing Regime by paying the difference in the entry fee paid by him for West Bengal and the entry fee of the fourth Cellular Operator."

On this basis, the Authority noted, the entry fee for Kolkata is (Rs. 78 crores—Rs. 25 crores= Rs. 53 crores) and for rest of West Bengal is zero. Since for Cellular Services Andaman and Nicobar is part of West Bengal (excluding Kolkata), for Unified Access Service License also the service area will be West Bengal (excluding Kolkata) and including Andaman and Nicobar. The entry fee for Andaman and Nicobar is Rs. 1 crore, so the entry fee for West Bengal excluding Kolkata and including Andaman and Nicobar will be Rs. 1 crore. This was also mentioned in TRAI's letter dated November 14, 2003 wherein the issue of entry fee for new Unified License (UASL) is explained.

Considering the above, as already specified in TRAI's recommendations and subsequent clarification dated November 14, 2003, the entry fee for new UASL in West Bengal including Andaman and Nicobar is Rs. 1 crore.

Addl. Agenda Item No. 2 : The issue related to Ombudsman for Consumer Complaints.

The Authority decided that a detailed Consultation Paper should be prepared. We should look at various points including:

1. What are the provisions regarding Ombudsman in TRAI Act.
2. Which relevant legal provisions apply including those some other laws relating to the Telecom Sector.
3. Whether an amendment to the law would be required.
4. More details on the Ombudsman Institution in Australia and U.K.
5. Clarify that we are not infringing the Authority of Consumer Courts. The issue is one of self regulation of the industry.
6. Give example from other sectors such as Insurance etc.

ANNEXURE XIII

RECOMMENDATION OF TELECOM REGULATORY AUTHORITY OF INDIA
FOR KEEPING OF ENTRY FEE FOR NEW UNIVERSAL ACCESS SERVICE
LICENCE AT THE SAME LEVEL AS DETERMINED IN 2001



भारतीय दूरसंचार विनियामक प्राधिकरण
महानगर दूरसंचार भवन, जवाहर लाल नेहरू मार्ग,
(पुराना मिंटो रोड), नई दिल्ली-110 002
TELECOM REGULATORY AUTHORITY OF INDIA
Mahanagar Doorsanchar Bhawan, Jawahar Lal Nehru Marg,
(Old Minto Road), New Delhi-110002
Fax: 91-11-23213294

No. 107-1/2011-MN

Dated: 18th August, 2011

To

Ms. Sudha Sharma,
Section Officer (AS-I)
Ministry of Communications and IT,
Department of Telecommunications,
20, Ashoka Road,
Sanchar Bhawan,
New Delhi-110 001.

Subject: Rajya Sabha Provisional Admitted Question Dy. No. S4068 for answer on 19.8.2011 raised by Shri Jai Prakash Narayan Singh, Hon'ble MP, regarding "TRAI recommendations on entry of new UAS licences."

Reference DoT's letter No. 20-79/2007-AS.I dated 11.8.2011.

2. I have been directed to forward the inputs for framing the reply (enclosed) to the above said Parliament Question.

3. This is issued with the approval of the Authority.

Sd/-

(Sanjeev Kumar Sharma)
Joint Advisor (MN)

Encl: As above.

Copy to: SRO (Coord.) along with a copy of reply to the Parliament Question for uploading on the Internet of TRAI.

Rajya Sabha

Question No. Dy. No. : S 4068
By (Name of MPs) : Shri Jai Prakash Narayan Singh
For Reply on (Date) : 19.08.2011
Subject : TRAI recommendations on entry of new UAS Licences

The inputs from TRAI for framing the reply is as below:—

Recommendations given in January 2005

TRAI's Recommendations of January, 2005, related to Unified Licensing Regime. These recommendations were given pursuant to its earlier recommendations dated 27th October, 2003, and the amendment to the NTP'99 in November, 2003, by the Department of Telecommunications providing for Unified Licensing Regime. In these recommendations the Authority envisaged that there shall be four categories of licenses namely Unified License, Class License, Licensing through Authorization and Stand alone Broadcasting and Cable TV licenses.

In so far as licensing fee is concerned TRAI was of the view that the telecom services should not be considered as a source of revenue for the Government.

Para 10.1 of the recommendations reads as follows:—

"TRAI is of the view that the telecom services should not be treated as a source of revenue for the Government. Imposing lower license fee on the service providers would encourage higher growth, further tariff reduction and increased service provider revenues. With increased growth, it would be a win-win situation for the industry and the Government."

Para 11.1 of the recommendations reads as follows:—

"For Class license, niche operators and services licensed through Authorisations, there shall be no Registration Charge. The 'nil' registration charge for niche operators who offer fixed telecom services, limited to some SDCAs, is in line with the objective of ease of entry enshrined in the concept of Unified License."

(emphasis supplied)

Para 11.2 of the recommendations states that for Unified Licenses the registration charge shall have two components, besides initial spectrum charge.

- (i) Registration Charges based on entry fee paid by NLD and ILD operators
- (ii) Registration Charges based on entry fee paid by new Basic Service Operators (entered in/after 2001).

After dealing with details of the calculations, TRAI in para 11.4 recommended as follows:—

"A new unified licensee will have to pay Registration charges which will have two components, i.e. one is Rs. 107 crores and the second component will depend upon the number of service area(s)/circle(s) where the service provider wants to offer access services.....The Registration charge will be dependent on the service area (owing to second component) but not dependent on the number of service(s) being offered under this category."

Further, in Para 11.6 of the recommendations TRAI recommended *"The Authority has also noted that above mentioned Registration Charge for a Unified License is not 'low' as envisaged in the key objective of ease of entry in the telecom market. To ensure that existing operators are in no worse off situation and level playing field is maintained between new and existing operators, it is not possible to keep the registration charges lower than the presently prescribed charges. However, the Authority recommends that Registration charges for Unified License should be gradually reduced from the recommended level to Rs. 30 lakhs after 5 years (starting from the date of implementation of ULR). This decrease would be non-linear with lesser reduction in the initial years.....The Registration Charges based on entry fee paid by new basic service operators (entered in/after 2001) should also reduce in the same proportion."*

(emphasis supplied)

In para 11.7 the Authority noted that *".....the basic objective of unified Licensing is to ensure the easy entry of the operator into the Indian Telecom Sector, and therefore, the intention is never to create any barrier in the form of high entry fee but at the same time the level playing field issue among various operators is a very important regulatory aspect which cannot be ignored. In case, the entry fee is Service specific then it kills the true spirit of Unified License because in a way the existing regime is also service specific and the same will continue to remain even under Unified Licensing Regime which is proposed to be not specific to a type of service in general...."*

In so far as spectrum charges are concerned TRAI stated in Para 9.1 *"In the existing policy, spectrum charges have two components—(i) one time spectrum charges which are paid as part of one time entry fee by the service providers and (ii) annual spectrum charges which are paid in the form of percentage of AGR. The spectrum related issues including spectrum pricing and its allocation are already under a consultation process and depending upon the comments received during consultation process and TRAI's own analysis the spectrum recommendations will be finalized. In the interim period till spectrum guidelines are issued by the Government of India based on TRAI's recommendations, the existing spectrum pricing and allocation procedures will continue."*

In para 9.3 of the recommendations TRAI clarified *"....TRAI while finalising recommendations on spectrum related issues will keep the aspect of level playing field in mind and TRAI will shortly come out with spectrum recommendations"*.

In 2005, TRAI sent the 'Recommendations on Spectrum Related Issues' dated May 13, 2005.

In para 4.2.1 of the recommendations TRAI mentioned that *"it is desirable that through regulatory measures, the cost of inputs including spectrum, should be reduced so that providing the final product is economically viable at an affordable price which may have to be even lower than the present tariffs to meet expansion requirements in rural areas, TRAI in its recommendations on Unified Licensing Regime had mentioned that the telecom services should not be treated as a source of revenue for the Government. Imposing lower license fee on the service providers would encourage higher growth, further tariff reduction and increased service provider revenues. With increased growth, it would be a win-win situation for the industry and the Government"*.

In para 4.3.3 of the recommendations, while deciding the one-time charge for new entrants, TRAI reiterated *".....till Unified Licensing regime comes into effect and also till two years of implementation of Unified Licensing regime, the entry fee which includes one-time spectrum*

charge for new entrants shall be the same as the entry fee under Unified Access Licensing Regime for each service area.

*The new operators could enter the market either as UASLs or as unified license operators subject to acceptance of TRAI's recommendations on unified licensing. In UASL, the one time spectrum charges and entry fee for license have not been separated. In other words, the entry fee includes one time spectrum charge also. If an operator enters the market through UASL route then entry fee paid by him would also include one time spectrum charge. **After implementation of unified license regime as recommended by TRAI and subject to approval by Government of India, Authority recommends that the one time spectrum charges would be equal to UASL entry fee in that service areas minus the component of registration charge based on the entry fee paid by new BSO (entered in/after 2001), specified by TRAI in its recommendations on Unified licensing regime dated 13th January 2005.***

The pan India amount shown in Annexure 4.1 of the recommendations for the entry fee in UASL regime is Rs. 1658.57 Cr. which is same as the entry fee determined in 2001.

Recommendations given in 2007

In 2007, TRAI sent its recommendations on 'Review of License terms and conditions and number of access service providers' dated 28th August, 2007. At para 2.73 of the recommendations it stated that "...the Authority is not recommending the standard options pricing of spectrum, however, it has elsewhere in the recommendation made a strong case for adopting auction procedure in the allocation of all other spectrum bands except 800, 900 and 1800 MHz."

On the issue of new entrant, TRAI at para 2.78 stated "As for as a new entrant is concerned, the question arises whether there is any need for change in the pricing methodology for allocation of spectrum in the 800, 900 and 1800 MHz bands. Keeping in view the objective of growth, affordability, penetration of wireless services in semi-urban and rural areas, the Authority is not in favour of changing the spectrum fee regime for a new entrant Opportunity for equal competition has always been one of the prime principles of the Authority in suggesting a regulatory framework in telecom services. Any differential treatment to a new entrant vis-a-vis incumbents in the wireless sector will go against the principle of level playing field. This is specific and restricted to 2G bands only i.e. 800, 900 and 1800 MHz. This approach assumes more significance particularly in the context where subscriber acquisition cost for a new entrant is likely to be much higher than for the incumbent wireless operators".

In para 2.79 of the recommendations, TRAI did not favour auctioning of spectrum stating that "In the case of spectrum in bands other than 800, 900 and 1800 MHz i.e. bands that are yet to be allocated, the Authority examined various possible approaches for pricing and has come to the conclusion that it would be appropriate in future for a market based price discovery systems. In response to the consultation paper, a number of stakeholders have also strongly recommended that the allocation of spectrum should be immediately de-linked from the license and the future allocation should be based on auction. The Authority its recommendation on "Allocation and pricing of spectrum for 3G and broadband wireless access services" has also favored auction methodology for allocation of spectrum for 3G and BWA services. **It is therefore recommended that in future all spectrum excluding the spectrum in 800, 900 and 1800 bands should be auctioned so as to ensure efficient utilization of this scarce resource.** In the 2G bands (800 MHz/900 MHz/1800 MHz), the allocation through auction may not be possible as the service providers were allocated spectrum at different times of their license and the amount of spectrum with them varies from 2x4.4 MHz to 2x10 MHz for GSM technology and 2x2.5 MHz to 2x5 MHz

in CDMA technology. Therefore, to decide the cut off after which the spectrum is auctioned will be difficult and might raise the issue of level playing field."

Thus in 2005 and 2007 recommendations, TRAI recommended the continuation of entry of new UAS licenses at the same level as determined in 2001.

Recommendations given in 2010

In its recommendations on "Spectrum Management and Licensing Framework", May, 2010, the Authority concluded that it is not feasible to give spectrum in 800, 900 and 1800 MHz. Accordingly, at para 2.51 of the recommendations, the Authority recommended ***"keeping in view the scarcity of spectrum and the need to provide the contracted spectrum to the existing licensees, the Authority recommends that no more UAS licence linked with spectrum should be awarded"***.

In so far as criteria for assignment of spectrum is concerned, it was discussed in para 3.46 of the recommendations wherein Authority concluded that it is not feasible to auction spectrum in the 800, 900 and 1800 MHz bands. In para 3.48 the Authority recommended that spectrum in 800 and 900 MHz bands shall be subject to auction as and when it is refarmed for 3G and other future technologies.

Sd/-

(Sanjeev Kumar Sharma)
Joint Advisor (MN)

ANNEXURE XIV

DECISION DATED 24 NOVEMBER, 2003 BY THE MINISTER OF COMMUNICATIONS & INFORMATION TECHNOLOGY REGARDING GRANT OF UNIVERSAL ACCESS SERVICE LICENCES ON FIRST-COME-FIRST-SERVE BASIS

Applications received for grant of Unified Access Services License.

Applications have been received from M/s Tata Teleservices and M/s Bharti Cellular Ltd. for grant of Unified Access Service Licenses. M/s Tata Teleservices have so far applied for eight licenses in eight service areas viz. Bihar, HP, MP, Orissa, Rajasthan, UP(E), West Bengal and Kolkata. M/s Bharti Cellular Ltd. has applied for Six licenses in six service areas viz. Bihar, Odisha, Rajasthan, UP(E), Andaman and Nicobar and West Bengal and Jammu and Kashmir. A copy of the covering letter of application of M/s Tata Teleservices Ltd. is placed at p.1/c, A copy of one of the application of M/s Bharti Cellular Ltd. (all the six applications are similar) is placed at p.2/c. M/s Bharti Cellular Ltd. has also submitted a letter regarding Roll Out Obligation for all the six service areas which is placed at p.3/c.

Both the companies have made out their applications in the formatprescribed for making application for Basic Service License. A processing fee of Rs. 15,000/- per license application has also been furnished.

After announcement of the guidelines for UASL on 11.11.2003 a ...has been taken in another file to accept applications for fresh UAS licences in the format and manner of Basic Service License application.

A preliminary check has been carried out with reference to all these applications for issue of Letter of Intent towards grant of licenses. Individualin respect of all the applications for 14 licenses of both these ...have been filled up and placed at p.4/c to p.17/c. As may be from these check lists, the applications are in order and Lols can be issued.

In view of the above, issue of Lol for grant of eight UASL to M/s Tata Teleservices and six UASL to M/s Bharti Cellular Ltd. for the service areas as above may be approved as per the draft format of Lol placed below submitted for approval of MoC & IT.

Submitted please.

Sd/-

(A.S. Verma)
Director (VAS-II)

370
for
cents from pro-ops

Further the new applicants would submit PSA equivalent to the 1st Cellular service. (However, quantity of PSA may need to be decided where there are no 1st Cellular operators). The above is over and above the recommendations of TRAI on Unified licensing which was approved by the Cabinet as the same was about migration of early existing Cellular & Basic service licenses to the Unified Comm. Service license.

It is also presumed that ~~the~~^{these} new licenses in the category of VASL would be on a first come first serve basis on the basis of applications.

Submitted for kind consideration.

Heinrich
22/11/2003

and approved by
Cabinet ✓

SR. DDG (VAS) may not confirm the presumptions of X 24 on 3/11. Also the quantum of PBS for service areas where there are no 4th Cellular operator also needs to be included

SR. DDG (VAS)

Dr (VAT)

[Signature]
21/11

[Signature]
21/11/23

Subject: Issue of Letters of intent for grant of new Unified Access Services Licences.

Further to note on p.2/n ante and the notes of DDG (LF) on p 2.3/n, following is stated:—

- (i) In terms of the guidelines announced on 11.11.2003 for UASL which are based on the recommendations of TRAI accepted by the Government, the Entry Fee for new UASL will be the Entry Fee paid by 4th Cellular Operator and where there is no 4th Cellular Operator it is the entry fee fixed by the Government for the Basic Service Operators.
- (ii) As regards PBG and FBG, this is to be based on the recommendations of TRAI in para 7.25 (Copy Flag 'X'). The matter was discussed with Dr. Seth, Member, TRAI and Mr. Rajendra Singh, Advisor, TRAI today. It was clarified by them that what they have meant in their recommendation is that not only PBG but also FBG will be same as for the 4th Cellular Operator which was fixed by the Licensor in the tenders. The amount fixed was an FBG of Rs. 50, 25 and 5 crores and a PBG of Rs. 20, 10 and 2 crores respectively for category 'A' (including metro cities), 'B' and 'C' service areas respectively. Even where there is no Fourth cellular operator, the same formula will apply.
- (iii) As regards the point raised about grant of new licences on first-cum-first served basis, the announced guidelines have made it open for new licences to be issued on continuous basis at any time. However, the spectrum is to be allotted subject to availability. This in effect would imply that an applicant who comes first will be granted the spectrum first so it will result in grant of licence on first-cum-first served basis.
- (iv) There are some additional points which have emerged after discussions with TRAI which need to be clarified as under:—
 - (a) The Entry Fee for Fourth Cellular operator for H.P. Circle (Rs. 1.1 crore) is lower than the Entry Fee fixed by the Government for BSO (Rs. 2.0 crores). However, the Entry Fee for UASL will be that of the Forth Cellular operator.
 - (b) For West Bengal Circle, there is no Fourth Cellular operator. Subsequently, Andaman and Nicobar Circle has been merged with the Cellular Service Area thereby the service area has become Andaman, Nicobar and West Bengal Telecom Circle. Kolkata Metro is a separate service area for cellular services. All this applies to UASL also. However, in the case of Basic Service, West Bengal Telecom Circle includes Kolkata for which Entry Fee fixed by the Government was Rs. 25 crores. The Entry Fee for A&N Circle fixed by Government for Basic Service is Rs. One crore.

The entry fee for UASL for Andaman and Nicobar and West Bengal Telecom Circle can be fixed on receipt of clarification from TRAI, which is expected to be available shortly. Till that time issue of LoI for this service area may be kept in abeyance.

- (v) With the above arrangement, the Entry Fee, PBG and FBG has been tabulated in the statement placed at Flag 'AA'.
- (vi) The requirement of eligibility conditions for grant of UASL viz. net worth, paid-up equity capital, experience, foreign equity cap has been taken same as for the 4th Cellular Operator.
- (vii) With the above clarifications, issue of the Letter of intent may be considered for approval.

for charter certificate (Seven LoI for Tata Tele Services and Five leaving out WB Telecom Circle for the time being.)

21/11/2003
(A. S. Verma)
Director (VAS-II)

Sr. DDG (VAS)

Member (P)

Member (F)

Chairman (TC)

As discussed, a letter seeking clarification from TRAI on item no. (iv) (b) of above note has been sent to TRAI today (vide P-21/C). Submitted for approval, P.

21/11/03

21/11/03
N. P. Chatterjee
21/11/03

Note from previous page may kindly be seen.

This matter relates to the grant of LoIs which will lead to licenses for Unified access services to M/s Tata Tele Services and M/s Bharti Cellular Ltd. We are in a position to issue 7 LoIs to M/s Tata Tele Services and 5 LoIs to M/s Bharti Cellular Ltd. The approach adopted is as per the recommendation made by TRAI and accepted by the Govt, and the eligibility criteria and roll out obligation and entry fee and financial conditions are as per those stipulated for the 4th Cellular Operator. TRAI has further clarified certain points vide their letter at P-21/C. We are not in a position immediately to

6/N

Some 2 Lols relating to West
Bengal & Andaman Nicobar cellular service
are as some clarification in regard
to entry fee is awaited from TRA/1
Then will be issued as soon possible
in this regard become clear.

May kindly consider giving
approval to the issue of Lols in
the above sense as per drafts placed
below.

24/11/03
24/11/03

Vinod
24/11/2003

NOCT
24.11.03

Chairman T.C.
N(P) (inter)
N(E) N. P. Prasad
24/11

Vinod
24/11

So. D. D. VAS

24/11/03

DDG(BS)

24/11/03

PK
24/11

ADG(VAS-II)

Pl. issue

24/11/2003

Issued from 24/C to 35/C.

File submitted for information
24/11/2003

Dir. (VAS-II)

24 NOV 2003
श्री त्रिलोक (निर्देश, वी. वी. वी.) Minister Office (Disinvestment, C. & IT)
श्री टी. / डी. नो. 24/11/03

SUMMARY OF RECOMMENDATIONS OF TELECOM REGULATORY
AUTHORITY OF INDIA ON 'UNIFIED LICENSING REGIME'
DATED 13 JANUARY, 2005

RECOMMENDATIONS ON UNIFIED LICENSING

Executive Summary

1.1. The New Telecom Policy 1999 (NTP'99) recognised that convergence of markets and technologies is a reality that is forcing realignment of the industry. At one level, telephone and broadcasting industries are entering each other's markets, while at another level, technology is blurring the difference between different conduit systems such as wireline and wireless. In line with NTP'99 and to keep pace with technological and market developments, the Authority considers that Unified Licensing Regime should be introduced in India. This would build economies of scale and scope and enhance competition. As a result, better services would be made available to the consumers at cheaper price.

1.2 The key objective of the Unified Licensing Regime is to encourage free growth of new applications and services leveraging on the technological developments in the Information and Communication Technology (ICT) area. Other main objectives of the Unified Licensing Regime are to simplify the procedure of licensing in the telecom sector, ensure flexibility and efficient utilisation of resources keeping in mind the technological developments, encourage efficient small operators to cover niche areas in particular rural, remote and telecommunication facilities-wise less developed areas and to ensure easy entry, level playing field and 'no-worse off' situation for existing operators.

1.3 It may be recalled that Telecom Regulatory Authority of India (TRAI) had issued draft recommendations on 'Unified Licensing Regime' on 06.08.2004 with the aim to gather the comments of stakeholders, if any, for implementation of Unified Licensing Regime for all telecom services.

1.4 It may also be recalled that TRAI in its Unified Licensing recommendations dated 27th October 2003 had envisaged a two-stage process to introduce a Unified Licensing Regime in the country. The first phase that entails a Unified Access Service License (UASL) at circle level has already been implemented. Once the broad framework was decided and put in place, the TRAI began consultation on the implementation of second phase of Unified Licensing Regime. A preliminary consultation paper, final consultation paper and subsequently draft recommendations on 'Unified Licensing Regime' were issued to obtain comprehensive inputs from all the stakeholders. Open House Discussions were also held in this regard. Based on the comments received in the consultation process and its own analysis TRAI has finalised its recommendations of Unified Licensing Regime in India.

1.5 Salient features of TRAI's recommendations are as follows:

(i) Framework of Unified Licence:

(a) There shall be four categories of licenses:

- **Unified License**—All Public networks including switched networks irrespective of media and technology capable of offering voice and/or non-voice (data services) including Internet Telephony, Cable Television (TV), Direct To Home (DTH), TV & Radio Broadcasting shall be covered under this category. Unified License implies that a customer can get all types of telecom services, from a Unified License Operator. The operator can use wireline or wireless media.
- **Class License**—All services including satellite services, which do not have both way connectivity with Public Network, shall be covered under Class license. This category excludes Radio Paging and Public Mobile Radio Trunking Systems (PMRTS) Services and includes Niche Operators.
- **Licensing through Authorisation**—This category will cover the services for provision of passive infrastructure and bandwidth services to service provider(s), Radio Paging, PMRTS, Voice Mail, Audiotex, Video Conferencing, Videotex, E-mail service, Unified Messaging Services, Tele-banking, Tele-medicine, Tele-education, Tele-trading, E-commerce, Other Service Providers, as mentioned in NTP'99 and Internet Services including existing restricted Internet Telephony (Personal Computers (PC) to PC; within or outside India, PC in India to Telephone outside India, IP based H.323/SIP Terminals connected directly to ISP nodes to similar Terminals; within or outside India), but not Internet Telephony in general.
- **Standalone Broadcasting and Cable TV licence**—This category shall cover those service providers who wish to offer only broadcasting and/or cable services.

- (b) This licensing framework except stand-alone Broadcasting & Cable TV services shall be hierarchical in nature with Unified Licence being at the highest hierarchical level. Such a licensing regime would enable a licensee to provide any or all telecom services by acquiring a single license.
- (c) In the New Licensing Regime there shall be no restriction on usage of Internet Telephony or other IP enabled services provided they are offered by operators with Unified License who have duly paid the prescribed registration charges and who will be subjected to license fees. With this India will join a group of more than 80 countries where Internet Telephony is permitted. In the interest of security, suitable monitoring equipment as may be prescribed will be provided by the licensee for monitoring as and when required by the licensor.
- (d) Standalone licenses for Broadcasting Services would continue to be issued. The prevailing process of issuing of such a license by I&B Ministry (including allocation of spectrum in consultation with WPC) would also continue. If a unified licensee wants to offer 'Broadcasting Service', the licensee will have to apply to the I&B Ministry in case such clearance is required and fulfil other requirements as prescribed. The content in any case, would be regulated by I&B Ministry.

The Authority noted that broadcasting services have an existing regime with terms & conditions different from those encompassed in the general framework of Unified Licensing. Moreover, it was noted that there are some Broadcasting Recommendations of the Authority already under consideration by the Government. Therefore, the

preferred change to the overall framework of the Unified License, in the case of Broadcasting, would require further adjustments. The Authority expects the Government to take account of the framework which has been specified here, in its consideration of the Recommendations which have earlier been provided on Broadcasting. The decision of the Government in that context will give the basis for further assessment by the Authority to develop a transition towards a comprehensive License regime with Broadcasting being treated under the broad framework of Unified Licensing itself, consistent with the principles applied for other services under this framework. Therefore, Authority considered that at this stage it will be appropriate as a transition arrangement to keep this service as a separate category under unified licensing regime for ease of implementation and administration of the recommended unified licensing regime.

- (e) **Niche Operators**—To increase penetration of telecom services in rural/remote/backward areas from telecom point of view, Authority recommends that SDCAs where fixed rural tele density is below 1% shall be area of operation for Niche Operators. Niche Operators shall be permitted to offer fixed telecom services including multimedia, Internet telephony and other IP enabled services only in these SDCAs. These operators shall however, be permitted to use wireline/fixed wireless networks. This definition of niche operators shall be reviewed depending upon market conditions and development of various technologies and various applications.
- (ii) **Service Area:** Depending upon the choice of service provider it could be national level or circle level (same as in UAS regime). For niche operators it would be at SDCA level.
- (iii) **Rollout Obligations:** For access services UASL rollout obligations shall continue under Unified Licensing Regime. For National Long Distance services, it is recommended that the licensee shall make an arrangement to pick up/handover long distance traffic of his subscribers in all service areas. In the absence of carrier pre-selection or call-by-call selection, it shall be the responsibility of the Unified Licensee/access service provider at originating end to ensure completion of calls to all destinations in the country. Once carrier pre-selection (CPS) is implemented, it will be the responsibility of the unified licensee/NLD operator(s) to complete all the calls of subscriber(s) who has/have pre-selected this licensee as a carrier of their choice. Inter-service area traffic could be handed over/picked up at the choice of Unified Licensee/NLDO either at a central location or LDCA. The traffic could also be handed over/picked up at SDCA level with the mutual consent of interconnecting service providers. For ILD services existing roll-out obligations would continue. This level of handover/takeover of inter service area traffic is mentioned here only to the extent that it affects the roll-out obligations for NLD services, however, detailed regulation on Interconnection which includes level of traffic handover between various operators, shall be brought out by TRAI separately from time to time as required.
- (iv) **Bank Guarantees:** Performance Bank Guarantee (PBG) for Unified License will be as per UASL. There shall be no PBG for Class License and 'Licensing through Authorisation'. For NLD/ILD operators and UASLs who do not migrate to Unified Licensing Regime, the existing PBG shall continue.
- (v) **Spectrum:** Spectrum related issues including spectrum pricing and its allocation are already being dealt with separately and depending upon the comments received during consultation process and TRAI's own analysis the spectrum recommendations will be finalized. In the interim period till spectrum guidelines are issued by the Government of India, the existing spectrum pricing and allocation procedures will continue.

(vi) **License Fee:**

- a. For Unified License, Class License and Niche operators the License fee shall be [contribution to USF (5%) + Administrative cost (1%)] i.e. 6% of Adjusted Gross Revenue (AGR). The administrative cost is required for managing, licensing and regulating the sector. It is recommended that with technological developments, flexibility in the licensing regime, deployment of more and more wireless technologies and the growth of telecom services even in backward areas from telecom point of view, the Government may consider reviewing the level of USO levy and Administrative fee. Services licensed through Authorisations shall not be required to pay any License fee.
- b. AGR shall include only the revenue accrued out of telecom services and shall not include sale of capital goods, sale of handsets, dividend and interest earned on various deposits. To ensure that bundling of handsets with tariff schemes is not misused, the existing provision of tariff schemes with bundling to be made available to subscribers even without bundling, shall continue.
- c. All the licensees shall maintain separate accounts for every service and product/network service for each of the licensed areas as per TRAI's Regulations from time to time.

(vii) **Registration Charges:**

- a. For Class license, niche operators and services licensed through Authorisations, there shall be no Registration Charge.
- b. For Unified License the Registration charge shall have two components, besides initial spectrum charge.
 - **Registration Charges based on entry fee paid by NLD and ILD operators:** Basis shall be entry fee paid by long distance operators (NLD plus ILD) which will be discounted on *pro rata* basis for the period for which license has been used. Based on above, the entry fee for long distance component shall be Rs. 107 crores.
 - **Registration Charges based on entry fee paid by new Basic Service Operators (entered in/after 2001):** This component shall depend upon the Service area(s)/ Circle(s) where the Unified Licensee wishes to offer access services. Basis shall be entry fee paid by new BSO (entered in/after 2001) multiplied by the ratio of all India fixed subscribers (both wireline and WLL (F) subscribers included) to the total (fixed plus mobile) subscriber base of these Pvt. operators. Subscriber base of private BSO entered in/after 2001 shall be considered for this purpose.

Registration Charges for a circle = Entry fee paid by BSOs (entered in/after 2001) of the circle X

Total (all India) fixed subscribers [wireline + WLL(F)]

Total (all India) subscribers (fixed and mobile) of the New BSOs entered in/after 2001

To calculate this component of registration charges the data of number of subscribers of previous quarter from the date of acceptance of TRAI's recommendations could be taken as a basis. WLL (M) subscribers will be treated as mobile for this purpose.

- c. Spectrum charges, including initial spectrum charge for entry, wherever applicable, would be extra.
 - d. Registration charges for Unified license should be gradually reduced from the recommended level to Rs. 30 lakhs after 5 years (starting from the date of implementation of ULR). This decrease would be non-linear with lesser reduction in the initial years.
- (viii) **Reselling:** The Authority recommends that reselling should not be permitted at this stage. However, franchise and sharing of infrastructure among service providers should continue to be implemented.
- (ix) **Migration Optional or Compulsory:** It is recommended that migration of the existing service providers to the ULR may be optional. However, after a period of 5 years it shall be mandatory for all telecom operators to migrate to Unified Licensing Regime.
- (x) Till Unified Licensing Regime comes into effect the operator is free to take UASL in any circle and this situation should continue till two year of implementation of Unified Licensing Regime.
- (xi) This period of two years would also be available for all other existing services. **After this period of two years no new service specific license including Unified Access License, as in the existing licensing regime, shall be issued and all new Service Providers shall be licensed under new Unified Licensing Regime.**
- (xii) It shall be mandatory for the Unified licensee to provide interconnection to all eligible Telecom Service Providers (eligibility shall be determined as per the service provider's license agreement and TRAI's determination/orders/regulations issued from time to time) as well as Unified Licensees to ensure that the calls are completed to all destinations and when carrier pre-selection is introduced the subscribers could have a free choice to make inter-circle/international long distance calls through other operators. Principles of non-discrimination shall be followed in the matter of interconnection.
- (xiii) The Authority has also noted that there is adequate competition in all service areas, which is expected to ensure completion of calls in all service areas. All service areas including North East, Assam and J&K have at least 3 licensed access (both fixed and mobile) service providers.
- (xiv) The Authority, while deciding the recommendations on Unified Licensing regime, have kept in mind the issues of level playing field and 'no worse off' situation for existing NLD operators since a unified licensee will be free to offer any telecom service including long distance services which cover inter-service area connectivity also. By fixing Registration fee of unified licensee equal to discounted fee of long distance operator plus a component based on entry fee paid by new Basic Service Operators (entered in/after 2001), the level playing field between existing NLD operators and the unified licensee is maintained. Regarding the effect on the business case of existing NLD operators, it is pertinent to note that right from the time of opening of long distance services for private sector participation, open competition with unlimited number of players is permitted. Regarding the already rolled out network by existing NLD operators, it is pertinent to note that existing NLD operators still have to roll out around 60% of their network and any relaxation in rollout obligations (as recommended in ULR) at this stage is substantially advantageous to them also. Secondly, transmission system installed by them is not exclusively for NLD services, and most of the existing NLD operators are integrated operators and their transmission system is shared for different services being offered by them under different licenses. In addition, the license fee for long distance service (both NLD and ILD) is reduced from the existing level of 15% to 6% [contribution to USF(5%) + Administrative cost (1%)].

In Authority's opinion this should address the issue of level playing field between existing long distance operators and other service providers.

ANNEXURE XVI

DECISION FOR REDUCTION OF AGR DATED 19 DECEMBER, 2003

All of us are grateful to you for the discussion this afternoon about the measures to be taken for further growth of the telecom sector. The measures that have been agreed to are as follows:

A. Non-Financial Measures

1. FDI cap shall be raised from 49 per cent to 74 per cent. The extra proportion will be provided by Foreign Institutional Investors only. As I had mentioned earlier, the concerns expressed by security agencies had been taken into account in drafting the proposal for the GoM. However, such residual issues that remain will be sorted out by our Ministry with the agency.
2. Inter-circle and intra-circle mergers and acquisitions have been allowed. TRAI is working on the guidelines. DoT will finalise these guidelines expeditiously.

B. Reduction in Licence Fee

1. The licence fee shall be reduced by 2 per cent in each of the three categories of service areas—A,B and C—for Cellular/Basic/UASL, but with the stipulation that no operator shall pay less than 5 per cent of his Adjusted Gross Revenue—the latter, as you know, is the portion of the levy that is set apart for the Universal Service Obligation Fund.
2. For companies operating the first two cellular licences in the circle areas, in addition to the incentive being given in (B1) above, the licence fee shall be reduced by another 2 per cent of the AGR for a period of 4 years with effect from 1.4.2004. This reduction will be subject to the proviso indicated above—namely that no operator shall pay less than 5 per cent of AGR, the requirement for the USO. This class of cellular operators is under financial strain as their network has eroded substantially, and they are facing difficulties in servicing their debts etc.

C. On a rough calculation the revenue implications of the proposals are as follows:

Proposal B1: Reduction of revenue of about Rs. 885 crore for 2004-05. Out of this amount, about Rs. 225 crore is estimated to go to private operators, Rs. 560 crore to BSNL and Rs. 100 crore to MTNL. *Proposal B2:* Rs. 83 crore per annum, a total Rs. 332 crore over the four year period.

As you know, this sector is growing vigorously. With these incentives, coupled with the consolidation of companies because of mergers and acquisitions, as well as the investment that will flow in as a result of proposal at 'A', we estimate that growth will be accelerated, and that in fact the total revenue to the Government will increase over time.

The purposes of these incentives—higher investment, higher growth—will be nullified if the present animosities and litigation continue in this sector. Therefore, we will expect the cellular as well as basic operators to withdraw the challenges they have instituted against each other and

against the Government. Once that happens, the climate in this sector will improve and that in turn will make the sector vastly more attractive for investors. The incentives must be taken as full and final settlement of the matters that had been referred to the Group of Ministers by the Prime Minister.

I do hope that these proposals will receive your imprimatur.

Arun Shourie
(Arun Shourie)
19.12.2003

~~Finance Minister~~

*I agree. You may now
please proceed to implement
the proposals, as discussed.*

J
20/12

*Minister Telecom +
Disinvestment*

All of us are grateful to you for the discussion this afternoon about the measures to be taken for further growth of the telecom sector. The measures that have been agreed to are as follows:

A. Non-Financial Measures

1. FDI cap shall be raised from 49 per cent to 74 per cent. The extra proportion will be provided by Foreign Institutional Investors only. As I had mentioned earlier, the concerns expressed by security agencies had been taken into account in drafting the proposal for the GoM. However, such residual issues that remain will be sorted out by our Ministry with the agency.
2. Inter-circle and intra-circle mergers and acquisitions have been allowed. TRAI is working on the guidelines. DoT will finalise these guidelines expeditiously.

3. Ministry of Finance will facilitate dialogue of cellular companies in financial distress with financial institutions. Financial institutions will be encouraged to assess debt-relief steps on a case by case basis depending on the present financial condition of the companies and the viability of their respective schemes.

Sir,
FM's remarks on the other
version may kindly be seen.
FM has also seen this
version and agrees with
Para 3.
Regards Sir,
Prashant Subal
As As Per -

B. Reduction in Licence Fee

1. The licence fee shall be reduced by 2 per cent in each of the three categories of service areas—A, B and C—for cellular/Basic/UASL, but with the stipulation that no operator shall pay less than 5 per cent of his Adjusted Gross Revenue—the latter, as you know, is the portion of levy that is set apart for the Universal Service Obligation Fund.
2. For companies operating the first two cellular licences in the circle areas, in addition to the incentive being given in (B1) above, the licence fee shall be reduced by another 2 per cent of the AGR for a period of 4 years with effect from 1.4.2004. This reduction will be subject to the proviso indicated above—namely that no operator shall pay less than 5 per cent of AGR, the requirement for the USO. This class of cellular operators is under financial strain as their network has eroded substantially, and they are facing difficulties in servicing their debts etc.

C. On a rough calculation the revenue implications of the proposals are as follows:

- *Proposal B1* : Reduction of revenue of about Rs. 885 crore for 2004-05. Out of this amount, about Rs. 225 crore is estimated to go to private operators, Rs. 560 crore to BSNL and Rs. 100 crore to MTNL.
- *Proposal B2* : Rs. 83 crore per annum, a total Rs. 332 crore over the four year period.

As you know, this sector is growing vigorously. With these incentives, coupled with the consolidation of companies because of mergers and acquisitions, as well as the investment that will flow in as a result of proposal at 'A', we estimate that growth will be accelerated, and that in fact the total revenue to the Government will increase over time.

The purposes of these incentives—higher investment, higher growth—will be nullified if the present animosities and litigation continue in this sector. Therefore, we will expect the cellular as well as basic operators to withdraw the challenges they have instituted against each other and against the Government. Once that happens, the climate in this sector will improve and that in turn will make the sector vastly more attractive for investors. The incentives must be taken as full and final settlement of the matters that had been referred to the Group of Ministers by the Prime Minister.

I do hope that these proposals will receive your imprimatur.

Sd/-
(Arun Shourie)
19.12.2003

Finance Minister

No. 13-1/2003 BS-II Vol-IV
Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhavan, 20 Ashok Road, New Delhi-110 001

Dated: the 19th January, 2004

To

All Basic/Universal Access Services Licensees

**Sub: Amendment in the Licence Agreements for Basic/Unified Access Services
Licences with respect to Licence Fee.**

The undersigned is directed to convey the approval of competent authority for amendment in the licence agreement in respect of licence fee and with effect from 01.04.2004, the licence fee shall be payable at a revised rate given below:—

Service Area	Present Rate of Licence Fee	Revised Rate of Licence Fee
Delhi, Mumbai, Chennai, Kolkata, Andhra Pradesh, Gujarat, Karnataka, Maharashtra, Tamil Nadu	12% of Adjusted Gross Revenue	10% of Adjusted Gross Revenue
Haryana, Kerala, Madhya Pradesh including Chhattisgarh, Punjab, Rajasthan, UP (West), including Uttarakhand, UP (East), West Bengal	10% of Adjusted Gross Revenue	8% of Adjusted Gross Revenue
Andaman and Nicobar, Assam, Bihar (including Jharkhand), Himachal Pradesh, Jammu and Kashmir, North East, Odisha	8% of Adjusted Gross Revenue	6% of Adjusted Gross Revenue

Note: In respect of Basic Services, Mumbai is included in Maharashtra service area, Chennai is included in Tamil Nadu Service area and Calcutta is included in West Bengal Service area. Further, in respect of Cellular and Unified Access Services Licence, Andaman and Nicobar is a part of West Bengal Service area.

2. Other terms and conditions of the licence agreement remain unchanged.

Sd/-
(SUKHBIR SINGH)
Director (BS. II), DoT
Tel.No. 20306387

Copy to:

1. The Secretary, TRAI, New Delhi.
2. DDG (LF), DoT, New Delhi.
3. AB to COAI for Information Please.

Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhavan, 20, Ashok Road, New Delhi-110 001

No. 842-47/2002-VAS (Part)/14/10

Dated 27th January, 2004

To

All Cellular Mobile Services Licensees

Sub: Amendment in the Licence Agreements for Cellular Mobile Telephone Service (CMTS) Licences with respect to Licence Fee.

The undersigned is directed to convey the approval of competent authority for amendment in the CMTS licence agreement in respect of licence fee and that the licence fee shall be payable at a revised rate given below with effect from 01.04.2004:—

CMTS Service Area	Present Rate of Licence Fee	Revised Rate of Licence Fee
Delhi, Mumbai, Chennai, Kolkata, Andhra Pradesh, Gujarat, Karnataka, Maharashtra, Tamil Nadu	12% of Adjusted Gross Revenue	10% of Adjusted Gross Revenue
Haryana, Kerala, Madhya Pradesh, Punjab, Rajasthan, UP (West), UP (East), West Bengal	10% of Adjusted Gross Revenue	8% of Adjusted Gross Revenue
Assam, Bihar, Himachal Pradesh, Jammu and Kashmir, North East, Odisha	8% of Adjusted Gross Revenue	6% of Adjusted Gross Revenue

2. Other terms and conditions of the licence agreements remain unchanged.

Sd/-

(A.S. Verma)
Director (VAS-II)
Tel. 23718054

Copy to:

1. The Secretary, TRAI, New Delhi.
2. DDG (LF), DoT, New Delhi.
3. COAI for information.

ANNEXURE XVII

RESPONSE OF MINISTRY OF FINANCE DATED 21 DECEMBER, 2005 REGARDING RECOMMENDATION OF TELECOM REGULATORY AUTHORITY OF INDIA ON 'UNIFIED LICENSING REGIME' DATED 13 JANUARY, 2005

December 21, 2005

F.No. 3/11/03/Infra.

Dear,

Please refer to your U.O. Note dated June 6, 2005 seeking comments of the Ministry of Finance on "Spectrum Pricing" and "Spectrum Allocation" aspects in the context of the TRAI recommendations on spectrum related issues. The issue has since been examined and our comments are as follows:

1. As regards method of spectrum allocation, we support the method currently followed by DoT with the following modifications:
 - (a) In the first instance, the service area/subscriber base could be made equal for additional bandwidth. Spectrum allocation for CDMA can be revised upwards accordingly.
 - (b) Once the 1900 MHz spectrum is vacated a system of equal spectrum bandwidth allocation as suggested by TRAI may be considered.
2. Earmarking the 1900 MHz band for 3G services is recommended by ITU. We support the view of TRAI which is also supported by the Wireless Planning Cell of the DoT.
3. Regarding allocation of additional spectrum in the 800 MHz Band to CDMA operators, CDMA operators are entitled to allotment of additional spectrum for 2G/2.5G services as per their license conditions. TRAI has only reiterated current commitments and we support the same.
4. In so far as spectrum allocation fees are concerned, the options of Auction/Price Discovery, Base Fee, Revenue Share and a hybrid of base fee and revenue share were examined. Auction/Price Discovery and Base Fee methods are not appropriate, the first due to its monopolistic and cost implications and the latter as it implies an administratively determined fee without the basis of price discovery. While revenue share would be the most logical and transparent and also acceptable to the industry, free allocation of spectrum is in the nature of a subsidy, especially as the resource in question is scarce and in great demand. The hybrid option of a base fee combined with revenue share, therefore, appears to be the most appropriate.

5. It is also recommended that the issues should be put up for consideration and appropriate decision by the Committee of Secretaries and thereafter, by a Group of Ministers.

Sd/-
(M.F. Farooqui)

Shri R.J.S. Kushavah
Joint Wireless Adviser
605, Sanchar Bhawan,
20, Ashok Road, New Delhi
Tel. : 23036889
Fax : 23716111

ANNEXURE XVIII

LETTER OF DEPARTMENT OF TELECOMMUNICATIONS DATED 13 APRIL, 2007
SEEKING RECOMMENDATIONS OF TRAI ON THE ISSUE OF LIMITING THE
NUMBER OF ACCESS SERVICE PROVIDERS IN EACH SERVICE AREA AND
REVIEW OF THE TERMS AND CONDITIONS IN THE ACCESS PROVIDER
LICENCES INCLUDING USAGE OF DUAL TECHNOLOGY SPECTRUM,
REVIEW OF MERGER GUIDELINES ETC.

No. 16-3/2004-BS-II
Government of India
Ministry of Communications
Department of Telecommunications
Sanchar Bhavan, 20, Ashoka Road, New Delhi-110 001

Dated: 13th April, 2007

To

The Secretary,
TRAI,
MTNL Exchange Building,
Jawahar Lal Nehru Marg, Minto Road,
New Delhi.

Sir,

The policy on Unified Access Service Licensing was finalized in November 2003 based on the recommendations of TRAI. As on date, 159 licences have been issued for providing Access Services (CMTS/UASL/Basic) in the country. Generally, there are 5-8 Access Service providers in each service area. The Access Service providers are mostly providing services using the wireless technology (CDMA/GSM). As per the present policy, any Indian company fulfilling the eligibility criteria can apply for UAS licence. These are increasing the demand on spectrum in a substantial manner. The Government is contemplating to review its policy. A suggested option can be to put a limit on the number of Access Service providers in each service area, in view of the fact that spectrum is a scarce resource and to ensure that the adequate quantity of spectrum is available to the licensees to enable them to expand their services and maintain the Quality of Service.

2. Fast changes are happening in the Telecommunication sector. In order to ensure that the policies keep pace with the changes/developments in the Telecommunication sector, the

Government is contemplating to review the following terms and conditions in the Access provider (CMTS/UAS/Basic) licence:

- (i) Substantial equity holding by a company/legal person in more than one licensee company in the same service area (clause 1.4 of UASL agreement).
- (ii) Transfer of licences (clause 6 of the UASL).
- (iii) Guidelines dated 21.2.2004 on Mergers and Acquisitions. TRAI in its recommendations dated 30.01.2004 had opined that the guidelines may be reviewed after one year.
- (iv) Permit service providers to offer access services using combination of Technology (CDMA, GSM and/or any other) under the same licence.
- (v) Roll-out obligations (Clause 34 of UASL).
- (vi) Requirement to publish printed telephone directory.

Certain issues are applicable to other licences (NLD/ILD etc.) also.

3. TRAI is requested to furnish their recommendations in terms of clause 11(1)(a) of TRAI Act, 1997 as amended by TRAI Amendment Act, 2000, on the issue of limiting the number of Access providers in each service area and review of the terms and conditions in the Access provider licence mentioned in para 2 above.

Sd/-

(N. Parameswaran)
DDG (Access Services)
Tel: 23716874
Fax: 23372201

SUMMARY OF RECOMMENDATIONS OF TELECOM REGULATORY
AUTHORITY OF INDIA DATED 28 AUGUST, 2007 ON REVIEW
OF LICENSE TERMS AND CONDITIONS AND CAPPING
OF NUMBER OF ACCESS SERVICE PROVIDERS



Telecom Regulatory Authority of India

Recommendations

on

Review of licence terms and conditions and capping of
number of access providers

New Delhi: August 28, 2007

Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi-110 002

Chapter 6. Summary of recommendations

The Authority recommends the following:—

6.1 No cap be placed on the number of access service providers in any service area.

6.2 DoT should examine the issue early and specify appropriate licence fee for UAS licensees who do not wish to utilize the spectrum.

6.3 The Authority is of the opinion that there is a need to tighten the subscriber criteria for all the service areas so as to make it more efficient from the usage and pricing point of view. Further, in the category A, B and C service areas the subscribers are widely distributed in the service area and therefore the amount of spectrum required in these areas for the same number of subscriber as in a metro will be comparatively lower.

6.4 In order to frame a new spectrum allocation criteria, a multi-disciplinary Committee may be constituted consisting of representatives from DoT/TEC, TRAI, WPC wing, COAI & AUSPI. The Committee may be headed by an eminent scientist/technologist from a national level scientific institute like Indian Institute of Science, Bangalore. However, it is necessary to enhance the present subscriber norms as an adhoc measure so that the task of spectrum allocation is not stalled. The suggested revision is given below:—

GSM subscriber base criteria (millions of subscribers)

Service Area	2x6.2 MHz	2x8 MHz	2x10 MHz	2x12.4 MHz	2x15 MHz
Delhi/Mumbai	0.5	1.5	2	3.0	5
Chennai/Kolkata	0.5	1.5	2	3.0	5
A	0.8	3	5	8	10
B	0.8	3	5	8	10
C	0.6	2	4	6	8

CDMA subscriber base criteria (millions of subscribers)

Service Area	3rd Carrier (2x3.75 MHz)	4th Carrier (2x5 MHz)	5th Carrier (2x6.25 MHz)	6th Carrier (2x7.5 MHz)
Delhi/Mumbai	0.5	2	3.0	5
Chennai/Kolkata	0.5	2	3.0	5
A	0.8	5	8	10
B	0.8	5	8	10
C	0.6	4	6	8

6.5 GSM operators and CDMA operators may be given additional spectrum beyond 2x4.4 MHz and 2x2.5 MHz respectively after the operators achieve the required subscriber base and also report compliance of roll-out obligation.

6.6 Any licensee who seeks to get additional spectrum beyond 10 MHz in the existing 2G bands i.e. 800, 900 and 1800 MHz after reaching the specified subscriber numbers shall have

to pay a onetime spectrum charge at the above mentioned rate on prorata basis for allotment of each MHz or part thereof spectrum beyond 10 MHz.

Service Areas	Price (Rs. in million) for 2x5 MHz
Mumbai, Delhi and Category A	800
Chennai, Kolkata and Category B	400
Category C	150

For one MHz allotment in Mumbai, Delhi and Category A service areas, the service provider will have to pay Rs. 160 million as one time spectrum acquisition charge.

6.7 In future all spectrum excluding the spectrum in 800, 900 and 1800 bands should be auctioned so as to ensure efficient utilization of this scarce resource.

6.8 The revenue share spectrum charges as given in table below: may be adopted.

Spectrum	Current	Proposed
Upto 2x4.4 MHz	2%	No Change
Upto 2x6.2 MHz/2x5 MHz	3%	No Change
Upto 2x8 MHz	4%	No Change
Upto 2x10 MHz	4%	5.00%
Upto 2x12.5 MHz	5%	6.00%
Upto 2x15 MHz	6%	7.00%
Beyond 2x15 MHz	—	8.00%

6.9 The relevant service market be defined as wire line and wireless services. Wireless service market shall include fixed wireless as well.

6.10 The relevant geographic market shall be licensing service area as it exists today.

6.11 For determination of market power, market share of both subscriber base and adjusted gross revenue of licensee in the relevant market shall be considered to decide the level of dominance for regulating the M&A activity.

6.12 M&A guidelines should use Exchange Data Records (EDR) in the calculation of wireline subscribers and specifically VLR data, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base.

6.13 The duly audited Adjusted Gross Revenue shall be the basis of computing revenue based market share for operators in the relevant market.

6.14 The market share of merged entity in the relevant market shall not be greater than 40% either in terms of subscriber base or in terms of Adjusted Gross Revenue.

6.15 No M&A activity shall be allowed if the number of wireless access service providers reduces below four in the relevant market consequent upon such an M&A activity under consideration.

6.16 The existing cap of 2x15 MHz per operator per service area for metros and category A circle and 2x12.4 MHz per operator per service area in category B and C circle applicable for a post merger entity be removed for purposes of regulating M&A activity.

6.17 The annual license fee and the spectrum charge are paid as a certain specified percentage of the AGR of the licensee. On the merger of the two licences, the AGR of the two entities will also be merged and the license fee will be therefore levied at the specified rate for that service area on the resultant total AGR. Similarly, for the purpose of payment of the spectrum charge, the spectrum held by the two licensees will be added/merged and the annual spectrum charge will be at the prescribed rate applicable on this total spectrum.

6.18 A mix of *ex-ante* and *ex-post* approach for regulating acquisitions of equity stake of one licensee Company legal person/promoter company in the enterprise of another licensee in the same license area. Acquisition of equity capital up to 10% of the target licensee's enterprise shall be permitted by an automatic route and anything beyond that and up to 20% of the equity holdings of the target licensee company, shall be approved on a case by case basis and the process of such approvals will be based on the M&A guidelines contained in these recommendations.

6.19 The Authority while examining the issue of M&A had also deliberated on these terms for the transfer of licenses and has come to the conclusion that the present terms and conditions are adequate and therefore the Authority recommends that it does not require any change in the existing terms.

6.20 In case a licensee wishes to deploy any other advanced and efficient technology for providing mobile service, then the DoT should allocate spectrum subject to its availability.

6.21 A licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternative technology or which would be paid by a new licensee going to use that technology.

6.22 Levy of a specified amount of fee which should be, at least, equal to the entry fee for UAS licence. Further, for purposes of assessment of market power in the context or competition analysis in the market the combined market share arising out of service provision through both the technologies will be taken into account and obligations if any to be imposed on such dominant operators as and when necessary in future will be done with reference to combined market power of such licensees.

6.23 Regarding *inter se* priority for spectrum allocation when the existing licensee becomes eligible for allocation of additional spectrum specific to the new technology, such a licensee has to be treated like any other existing licensee in the queue and the *inter se* priority of allocation should be based on the criteria that may be determined by the Department of Telecommunications for the existing licensee.

6.24 The licensee will maintain separate detail of the subscriber number data for the purposes of spectrum allocation but the AGR will be the combined AGR of both the technologies. It is the combined AGR which will determine the license fee.

6.25 There is one major difference between a merged entity and an operator who has opted for multiple technologies for providing access services under one license. Such an operator will start deployment after the allocation of spectrum. It will be unfair to demand higher spectrum charges on grounds of combined total of spectrum without enrolling new subscribers. It would

destabilize the financial working of such an operator. Therefore, it is fair to grant a moratorium of one year from the date of allocation of spectrum, after payment of specified fee, for the levy of spectrum charges based on the combined total of spectrum allocated. This would mean that the operator would pay spectrum charges/fee on the basis of allocated spectrum in respective technologies for one year before graduating to a slab earmarked for the combined total of spectrum. The one year will be counted from the date of allocation of spectrum for the second technology.

6.26 In order to ensure that the additional spectrum is efficiently and properly utilized in a timely manner, the licensee should also be required to fulfil the contingent roll out obligation.

6.27 The present provisions of roll out obligations should not be changed for all the access service providers.

6.28 TEC should give the required certificate of compliance or any other report in inadequacy within 90 days. This time limit should start from the date when the application has been submitted to TEC.

6.29 The present position of monitoring compliance of roll out obligation cannot be allowed to continue and a permanent workable solution has to be evolved. In case it is not practical to provide full staff strength to TEC then the TEC may consider outsourcing this work to technically qualified organizations. TEC may consider involving VTM cells of DoT, CDOT and technical institutes like IITs to take up this job on their behalf and they may be suitably compensated by way of fee prescribed by DoT.

6.30 SACFA clearance should be given in a stipulated time frame of 60 days. In case no communication is received in this prescribed time-frame, the application will be deemed to be approved.

6.31 Without any change in the provision of LD, in case the roll out obligation is not met even after 52 weeks of the period prescribed for completing roll out obligations, the Authority recommends that the reference to termination of license in clause No. 35.2 of UASL may be replaced by the following:

- (i) The performance bank guarantee be forfeited and the service provider may be asked to resubmit PBG of the same amount.
- (ii) No additional spectrum may be allocated to licensees till he does not fulfil the roll out obligations.
- (iii) Such a licensee should not be eligible to participate in any spectrum auction till the roll out obligation is met.
- (iv) Any proposal of permission of merger and acquisition should not be entertained till the roll out obligation is met.

6.32 It is hoped that these will be serious deterrent and any linkage with termination of license in case of default in roll out obligation should be done away with.

6.33 The existing service providers who are in non-compliance of roll out obligation and do not possess the requisite TEC certificate may be given six months grace time as one time relief in present case only to comply with new certification scheme and imposition of penalty on earlier default will not be waived.

6.34 Any reintroduction of rural roll out obligation may pose legal issues including test of level playing field. Therefore, a scheme of financial incentive for the spread of infrastructure in the rural areas may be considered. As per this framework the licensee who covers 75% of development blocks in any service area (excluding the four Metro service areas) should be eligible for a payment at a reduced scale towards Universal Service Obligation fee. Such a licensee shall be required to pay 3% instead of present 5% contribution to the Universal Service Obligation Fund (USOF). The verification should be based on installation of identified physical infrastructure in the development blocks. It is natural that this financial incentive should come from the USOF as the scheme basically serves the objective of rural coverage only.

ANNEXURE XX

RECOMMENDATIONS OF TELECOM REGULATORY AUTHORITY OF INDIA DATED 28 AUGUST, 2007 AS APPROVED BY TELECOM COMMISSION

DECISION OF THE GOVERNMENT ON TRAI'S RECOMMENDATION DATED 29TH AUGUST 2007. ON "REVIEW OF LICENSE TERMS AND CONDITIONS AND CAPPING OF NUMBER OF ACCESS PROVIDERS"

Recommendations	Decision of Government
1. The main recommendations of TRAI (Summary of TRAI's recommendations Chapter 6)	It is noted that DoT had made a reference to TRAI to examine the issue of limiting the number of access services provider basically due to the shortage of spectrum. TRAI has not given any solution to the paucity of spectrum while recommending no capping on number of Access Services Licences. The issue of spectrum availability can not be ignored while granting new licences.
CHAPTER - 2 Para 6.1 to 6.8	
CHAPTER - 3 Para 6.9 to 6.19	
CHAPTER - 4 Para 6.20 to 6.26	
CHAPTER - 5 Para 6.27 to 6.34	
6.1. No cap be placed on the number of access service providers in any service area (para 6.1 in chapter 6)	Given the central aim of NTP, 99 to ensure rapid expansion of tele-density, the recommendation that no cap be placed on the number of access service providers in any service area is accepted.
6.2. DoT should examine the issue early and specify appropriate license fee for UAS licensees who do not wish to utilize the spectrum. (para 6.2 in chapter 6).	As per the NTP, 99, it was envisaged that there shall be the following categories of licences for telecommunication services: <ul style="list-style-type: none"> (i) Unified Licence for Telecommunication Services permitting Licensee to provide all telecommunication/telegraph services covering various geographical areas using any technology. (ii) Licence for Unified Access (Basic and Cellular) Services permitting Licensee to provide Basic and/or Cellular Services using any technology in a defined service area. Proposing a new category of licence <i>i.e.</i> "UAS Licensee who do not wish to utilize the spectrum" would be out of preview of NTP, 99. This recommendation is not accepted.

6.3. The Authority is of the opinion that there is a need to lighten the subscriber criteria for all the service areas so as to make it more efficient from the usage and pricing point of view. Further, in the category A, B and C service areas the Subscribers are widely distributed in the service area and therefore the amount of spectrum required in these areas for the same number of subscribers as in a metro will be comparatively lower. (para 6.3 in chapter 6).

6.4. In order to frame a new spectrum allocation criteria a multi-disciplinary committee may be constituted consisting of representatives from DoT/TEC, TRAI, WPC wing, COAI & AUSPI. The committee may be headed by an eminent scientist/technologist from a national level scientific institute like Indian Institute of Science, Bangalore. However, it is necessary to enhance the present subscriber norms as an adhoc measure so that the task of spectrum allocation is not stalled. The suggested revision is given below:- (para 6.4 in chapter 6)

**GSM subscriber base criteria
(millions of subscribers)**

Service Area	2x6.2 MHz	2x8 MHz	2x10 MHz	2x12.4 MHz	2x15 MHz
Delhi/Mumbai	0.5	1.5	2	3.0	5
Chennai/Kolkata	0.5	1.5	2	3.0	5
A	0.8	3	5	8	10
B	0.8	3	5	8	10
C	0.6	2	4	6	8

**CDMA subscriber base criteria
(millions of subscribers)**

Service Area	3rd Carrier (2x3.75 MHz)	4th Carrier (2x5 MHz)	5th Carrier (2x5 MHz)	6th Carrier (2x7.5 MHz)
Delhi/Mumbai	0.5	2	3.0	5
Chennai/Kolkata	0.5	2	3.0	5
A	0.8	5	8	10
B	0.8	5	8	10
C	0.6	4	6	8

More efficient methods and optimization techniques should be used by the telecom operators for spectrum utilization. There is a need to review the subscriber base spectrum allotment criterion.

To be examined by TEC before decision is taken by DoT. Till then TRAI's recommendation on enhancement of present subscriber norms for spectrum allocation is accepted subject to maximum of 10 MHz in a service area. However, till TEC recommendations on spectrum are received no spectrum may be issued to any one.

Recommendations		Decision of Government
<p>6.5 GSM operators and CDMA operators may be given additional spectrum beyond 2x4.4 MHz and 2x2.5 MHz respectively after the operators achieve the required subscriber base and also report compliance of roll-out obligation. (para 6.5 in chapter 6)</p> <p>6.6 Any licensee who seeks to get additional spectrum beyond 10 MHz in the existing 2g bands i.e. 800, 900 and 1800 MHz after reaching the specified subscriber numbers shall have to pay a one-time spectrum charge at the above mentioned rate on prorata basis for allotment of each MHz or part thereof of spectrum beyond 10 MHz in GSM and 5 MHz in CDMA.</p>		<p>Accepted keeping in view the initial roll out of 1st year.</p> <p>For spectrum allotment beyond 10 MHz for GSM & beyond 5 MHz for CDMA, Licensees must explore technological methods of efficient utilization of spectrum. In order to encourage Licensees to use all available methods for efficient spectrum utilization, the "Spectrum Enhancement Charge" may be levied on further spectrum allotment to licensees in addition to the annual spectrum charges based on revenue share. For each additional 1 MHz or part thereof "Spectrum Enhancement Charge" @ Rs. 16 Crore, 8 Crore, 3 Crore for Metro/Category 'A', Category 'B', Category 'C' service areas respectively may be charged.</p>
Service Areas	Price (Rs. In million) for 2x5 MHz	
Mumbai, Delhi and Category A	800	
Chennai, Kolkata and Category B	400	
Category C	150	
<p>For one MHz allotment in Mumbai, Delhi and Category A service areas, the service provider will have to pay Rs. 160 million as one time spectrum acquisition charge (para 6.6 in chapter 6).</p>		
<p>6.7 In future all spectrum excluding the spectrum in 800, 900 and 1800 bands should be auctioned so as to ensure efficient utilization of this scarce resource (para 6.7 in chapter 6).</p> <p>6.8 The revenue share spectrum charges as given in table below may be adopted (para 6.8 in chapter 6).</p>		<p>These recommendations are beyond the scope of present reference, not considered.</p> <p>To be decided after receipt of recommendation of TEC in respect of para 6.4 above.</p>
Spectrum	Current	Proposed
Upto 2x4.4 MHz	2%	No Change
Upto 2x6.2 MHz/ 2x5 MHz	3%	No Change
Upto 2x8 MHz	4%	No Change
Upto 2x10 MHz	4%	5.00%
Upto 2x12.5 MHz	5%	6.00%
Upto 2x15 MHz	6%	7.00%
Beyond 2x15 MHz	—	8.00%

Recommendations	Decision of Government
6.9 The relevant service market be defined as wire line and wireless services. Wireless service market shall include fixed wireless as well. (para 6.9 in chapter 6)	Accepted
6.10 The relevant geographic market shall be licensing service area as it exists today. (para 6.10 in chapter 6)	Accepted
6.11 For determination of market power, market share of both subscriber base and adjusted gross revenue of licensee in the relevant market shall be considered to decide the level of dominance for regulating the M&A activity. (para 6.11 in chapter 6)	Accepted
6.12 M&A guidelines should use Exchange Data Records (EDR) in the calculation of wireline subscribers and specifically VLR data, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base. (para 6.12 in chapter 6)	Accepted
6.13 The duly audited Adjusted Gross Revenue shall be the basis of computing revenue based market share for operators in the relevant market. (para 6.13 in chapter 6)	Accepted
6.14 The market share of merged entity in the relevant market shall not be greater than 40% either in terms of subscriber base or in terms of Adjusted Gross Revenue (para 6.14 in chapter 6).	Accepted
6.15 No M&A activity shall be allowed if the number of wireless access service providers reduces below four in the relevant market consequent upon such an M&A activity under consideration. (para 6.15 in chapter 6)	Accepted

Recommendations	Decision of Government
<p>6.16 The existing cap of 2x15 MHz per operator per service area for metros and category A circle and 2x12.4 MHz per operator per service area in category B and C circle applicable for a post merger entity be removed for purposes of regulating M & A activity. (para 6.16 in chapter 6)</p>	<p>It shall be considered alongwith TEC report spectrum issues (para 6.4 and 6.8 above).</p>
<p>6.17 The annual license fee and the spectrum charge are paid as a certain specified percentage of the AGR of the licensee. On the merger of the two licenses, the AGR of the two entities will also be merged and the license fee will be therefore levied at the specified rate for that service area on the resultant total AGR. Similarly, for the purpose of payment of the spectrum charge, the spectrum held by the two licensees will be added/merged and the annual spectrum charge will be at the prescribed rate applicable on this total spectrum. (para 6.17 in chapter 6)</p>	<p>May be accepted. However, in case of holding of spectrum of various technologies by the subsequent to M & A, spectrum charges and license fee etc. or any other criterion being followed by the licensor shall be applicable as in case of any other UAS/ CMTS licensee.</p>
<p>6.18 A mix of ex-ante and ex-post approach for regulating acquisitions of equity stake of one licensee Company/legal person/promoter company in the enterprise of another licensee in the same license area. Acquisition of equity capital up to 10% of the target licensee's enterprise shall be permitted by an automatic route and anything beyond that and up to 20% of the equity holdings of the target licensee company, shall be approved on a case by case basis and the process of such approvals will be based on the M & A guidelines contained in these recommendations. (para 6.18 in chapter 6).</p>	<p>Present guidelines on Substantial Equity shall continue <i>i.e.</i></p> <p>"No single company/legal person, either directly or through its associates, shall have substantial equity holding in more than one LICENSEE Company in the same service area for the Access Services namely; Basic, Cellular and Unified Access Service, Substantial equity herein will mean an equity of 10% or more. A promoter company/Legal person cannot have stakes in more than one LICENSEE Company for the same service area."</p>

Recommendations	Decision of Government
<p>6.19 The Authority while examining the issue of M & A had also deliberated on these terms for the transfer of licenses and has come to the conclusion that the present terms and conditions are adequate and therefore the Authority recommends that it does not require any change in the existing terms (para 6.19 in chapter 6)</p>	<p>Accepted</p>
<p>6.20 In case a licensee wishes to deploy an other advanced and efficient technology for providing mobile service, than the DoT should allocate spectrum subject to its availability. (para 6.20 in chapter 6)</p>	<p>It shall be considered as and when suitable new technology becomes available.</p>
<p>6.21 A licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternative technology or which would be paid by a new licensee going to use that technology. (para 6.21 in chapter 6).</p>	<p>A CMTS/UAS licensee using one technology (CDMA or GSM) shall be permitted on request, usage of alternative technology (GSM or CDMA respectively) and the allocation of prescribed spectrum subject to availability. However, such a licensee must pay a fee equal to the same amount of entry fee which has been paid by existing licensee using the alternative technology or which would be paid by a new licensee going to use that technology.</p> <p>At the time of further allotment of spectrum in any technology, allotment will be subject to the condition that in case eligibility of the licensee for allocated spectrum in other technology falls below the criterion for spectrum allotment in the specific technology for the last consecutive six months then corresponding chunk of spectrum in that technology will be surrendered by the license before any further allotment of spectrum is considered.</p> <p>BSNL/MTNL shall be permitted usage of alternative technology without paying the fee as envisaged about for other CMTS/UAS licensees.</p>
<p>6.22 Levy of a specified amount of fee which should be, at least, equal to</p>	<p>Accepted.</p>

Recommendations	Decision of Government
<p>the entry fee for UAS licence. Further, for purposes of assessment of market power in the context of competition analysis in the market, the combined market share arising out of service provision through both the technologies will be taken into account and obligations if any to be imposed on such dominant operators as and when necessary in future will be done with reference to combined market power of such licensees. (para 6.22 in chapter 6)</p>	
<p>6.23 Regarding <i>inter se</i> priority for spectrum allocation, when the existing licensee becomes eligible for allocation of additional spectrum specific to the new technology, such a licensee has to be treated like any other existing licensee in the queue and the <i>inter se</i> priority of allocation should be based on the criteria that may be determined by the Department of Telecommunications for the existing licensee. (para 6.23 in chapter 6)</p>	<p>Accepted for alternate technology (GSM/CDMA). For allocation of spectrum for dual technology, the date of payment of required fee shall determine the seniority.</p>
<p>6.24 The licensee will maintain separate detail of the subscriber number data for the purposes of spectrum allocation but the AGR will be the combined AGR of both the technologies. It is the combined AGR which will determine the license fee. (para 6.24 in chapter 6)</p>	<p>The recommendation of TRAI regarding combined AGR for license fee is accepted. For the purpose of spectrum allocation separate details of subscriber base will be maintained. The segregated revenue in the format of statement of revenue and license fee of license agreement is required to be furnished by the licensee to determine the stream-wise spectrum charges.</p>
	<p>It is proposed that subscriber base and AGR to be segregated into.</p> <ul style="list-style-type: none"> (i) Wireline (ii) GSM (iii) CDMA
<p>6.25 There is one major difference between a merged entity and an</p>	<p>Not required in view of 6.24 above.</p>

Recommendations	Decision of Government
<p>operator who has opted for multiple technologies for providing access services under one license. Such an operator will start deployment after the allocation of spectrum. It will be unfair to demand higher spectrum charges on grounds of combined total of spectrum without enrolling new subscribers. It would destabilize the financial working of such an operator. Therefore, it is fair to grant a moratorium of one year from the date of allocation of spectrum, after payment of specified fee, for the levy of spectrum charges based on the combined total of spectrum allocated. This would mean that the operator would pay spectrum charges/fee on the basis of allocated spectrum in respective technologies for one year before graduating to a slab earmarked for the combined total of spectrum. The one year will be counted from the date of allocation of spectrum for the second technology. (para 6.25 in chapter 6)</p>	
<p>6.26 In order to ensure that the additional spectrum is efficiently and properly utilized in a timely manner; the licensee should also be required to fulfil the contingent roll out obligation. (para 6.26 in chapter 6)</p>	<p>Accepted.</p>
<p>6.27 The present provisions of roll out obligations should not be changed for all the access service providers. (para 6.27 in chapter 6)</p>	<p>Accepted.</p>
<p>6.28 TEC should give the required certificate of compliance or any other report of inadequacy within 90 days. This time limit should start from the date when the application has been submitted to TEC. (para 6.28 in chapter 6)</p>	<p>a. Self certification scheme is already in place and shall continue.</p> <p>b. Authorised testing party of the Licensor shall issue the required test certificate of compliance within 120 days from the date of submission of self certificate which is correct and complete in all respect.</p>

Recommendations	Decision of Government
<p>6.29 The present position of monitoring compliance of roll out obligation cannot be allowed to continue and a permanent workable solution has to be evolved. In case it is not practical to provide full staff strength to TEC then the TEC may consider outsourcing this work to technically qualified organizations. TEC may consider involving VTM cells of DOT, CDOT and technical institutes like IITs to take up this job on their behalf and they may be suitably compensated by way of fee prescribed by DoT. (para 6.29 in chapter 6)</p>	<p>Accepted.</p>
<p>6.30 SACFA clearance should be given in a stipulated time frame of 60 days, In case no communication is received in this prescribed time frame, the application will be deemed to be approved. (para 6.30 in chapter 6)</p>	<p>SACFA clearance should be given in stipulated time frame of 60 days unless there are circumstances to the contrary.</p>
<p>6.31 Without any change in the provision of LD in case the roll out obligation is not met even after 52 weeks of the period prescribed for completing roll out obligations, the Authority recommends that the reference to termination of license in clause no. 35.2 of UASL may be replaced by the following. (para 6.31 in chapter 6)</p>	<p>The existing stipulation of termination of license under clause 35.2 of UASL shall continue In addition, following situation as per TRAI recommendation to be incorporated.</p>
<p>(i) The performance bank guarantee be forfeited and the service provider may be asked to resubmit PBG of the same amount.</p>	<p>(i) Accepted.</p>
<p>(ii) No additional spectrum may be allocated to licensees till he does not fulfil the roll out obligations.</p>	<p>(ii) Accepted.</p>
<p>(iii) Such a licensee should not be eligible to participate in any spectrum auction till the roll out obligation is met.</p>	<p>(iii) Accepted.</p>

Recommendations	Decision of Government
(iv) Any proposal of permission of merger and acquisition should not be entertained till the roll out obligation is met.	(iv) Any proposal for permission for merger shall not be entertained till the roll out obligation is met. However request for permission for acquisition may be entertained.
	Roll out for each licensed service area is to be dealt separately. In case of violation of roll out conditions, Government may consider termination of license in certain cases.
6.32 It is hoped that these will be serious deterrent and any linkage with termination of license in case of default in roll out obligation should be done away with. (para 6.32 in chapter 6)	This is merely an observation of TRAI.
6.33 The existing service providers who are in non-compliance of roll out obligation and do not possess the requisite TEC certificate may be given six months grace time as one time relief in present case only to comply with new certification scheme and imposition of penalty on earlier default will not be waived. (para 6.33 in chapter 6)	Being examined separately.
6.34 Any reintroduction of rural roll out obligation may pose legal issues including test of level playing field. Therefore a scheme of financial incentive for the spread of infrastructure in the rural areas may be considered. As per this framework the licensee who covers 75% of development blocks in any service area (excluding the four Metro service areas) should be eligible for a payment at a reduced scale towards Universal Service Obligation fee. Such a licensee shall be required to pay 3% instead of present 5% contribution to the Universal Service Obligation Fund (USOF). The verification should be based on installation of identified	To be decided in consultation with USOF Administrator later on.

Recommendations	Decision of Government
<p>physical infrastructure in the development blocks. It is natural that this financial incentive should come from the USOF as the scheme basically serves the objective of rural coverage only. (para 6.34 in chapter 6)</p>	
<p>2. Other Important points not covered in the summary recommendations by TRAI:</p> <p>5.23 TRAI has recommended that for licensees interested in offering mobile services, the time for roll out should be reckoned from the effective date of license or date of spectrum allocation, whichever is later. It is also now accepted that the effective date for the compliance of roll out obligation is the date of submission of self-certified test results/reports unless found defective or wrong, The date for estimating the liquidated damages should now be reckoned from the date of submission of self certification. However, any wrong submission of compliance should notify severe liquidated damages which could be 1.5 times of the amount which is presently provided in the license. (Refer para 5.23 of the recommendation)</p>	<p>Accepted. (including those licensees who are waiting for initial spectrum allotment)</p>

ANNEXURE XXI

PRESS RELEASE ISSUED BY DEPARTMENT OF TELECOMMUNICATIONS ON 19 OCTOBER, 2007 ANNOUNCING THEIR DECISION ON TELECOM REGULATORY AUTHORITY OF INDIA RECOMMENDATIONS DATED 28 AUGUST, 2007

DEPARTMENT OF TELECOMMUNICATIONS

PRESS RELEASE

Dated 19.10.2007

"Given the central aim of NTP 99 to ensure rapid expansion of tele-density" and the objective "to transform in a time bound manner, the telecommunications sector to a greater competitive environment in both urban and rural areas providing equal opportunities and level playing field for all players", the recommendations of TRAI that there should be no cap on the number of access provider in any service area has been considered by the Government and has been accepted.

The Unified (Telecom) Access Services (UAS) licenses are technology neutral and the licensees are required to provide access services and meet the stipulated roll-out obligations using wireline and/or wireless technologies by utilizing network equipment that meets the prescribed standards. The allocation of radio-spectrum and grant of Wireless License shall be subject to availability. In case UAS Licensee is not allocated spectrum due to non-availability, the Licensee shall endeavour to roll out services using wireline technologies. It has also been decided that the roll out for wireless services shall be reckoned from the date of spectrum allocation. This will also apply to those licensees who are awaiting initial spectrum allotment.

TRAI had recommended to enhance the subscriber link criterion for allocation for frequency spectrum to UAS/CMTS licensees and to set up a committee to study further allocation of spectrum. Government has accepted the TRAI's recommendation of enhanced subscriber linked criterion for frequency allocation and has set up a committee in Telecom Engineering Centre (TEC) to further study and give a report to the Government.

In order to further enhance the penetration of access services for rapid expansion of tele-density, it has also been decided that the existing private UAS Licensees may be permitted to expand their existing networks by using alternate wireless technology i.e. the present UAS Licensee who is using GSM technology for wireless access may be permitted to use CDMA technology and *vice-versa*. The spectrum for the alternate technology, CDMA or GSM (as the case may be) shall be allocated in the applicable frequency band subject to availability after payment of prescribed fee. Allocation of spectrum for the alternate technology may be done to private UAS Licensees on payment of prescribed fee, which will be an amount equal to the amount prescribed as entry fee for getting a new UAS license in the same service area. The existing UAS Licensees, who have already applied for allocation of spectrum for the alternate technology shall also be considered for allocation of spectrum in alternate technology from the date of

payment of prescribed fee. BSNL and MTNL being incumbent operators shall be permitted usage of alternative technology and allocated spectrum for the alternate technology without paying the prescribed fee. For the purpose of payment of license fee and spectrum charge, the stream-wise revenue of different technologies shall be considered.

At the time of further allotment of spectrum in any technology, allotment will be subject to the condition that in case the eligibility of the licensee for allocated spectrum in other technology falls below the criterion set for spectrum allotment in the specified technology for the last consecutive six months then corresponding chunk of spectrum in that technology will be surrendered by the licensee before any further allotment of spectrum is considered.

The Access Services providers shall endeavour to use more efficient methods and optimum technologies for spectrum utilization. In order to encourage Licensees to use all available methods for efficient spectrum utilization, the "Spectrum Enhancement Charge", in addition to annual spectrum charges based on revenue share, may be levied at the time of additional spectrum allotment to licensees beyond 10 MHz for GSM and 5 MHz for CDMA. For each additional 1 MHz or part thereof "Spectrum Enhancement Charge" @ Rs. 16 crore, 8 crore, 3 crore for Metro/Category 'A', Category 'B', Category 'C' service areas respectively may be charged.

SACFA clearance should be given in a stipulated time frame of 60 days unless there are circumstances to the contrary.

For the Substantial equity holding in the UAS/CMTS Licensee Company, there is no change in the existing criterion.

For failure to meet roll out obligation within prescribed time schedule, the existing stipulation of termination of license under Clause 35.2 of UAS Licence Agreement shall continue. In addition, Performance Bank Guarantee (PBG) may also be forfeited and the service provider may be asked to resubmit PBG of the same amount. No additional spectrum may be allocated to licensees without fulfilling the roll out obligations. In case spectrum auction, a Licensee, who has not met roll out obligation against an existing licence, should not be eligible to participate in any spectrum auction till the roll out obligation is met. Any proposal for permission for merger shall not be entertained till the roll out obligation is met; however, request for permission for acquisition may be entertained. Roll out for each licensed service area is to be dealt separately. In case of violation of roll out conditions, Government may consider termination of license in certain cases.

Self certification scheme for completion of roll out obligation is already in place and shall continue. The authorized testing party of the Licensor shall issue the required test certificate of compliance within 120 days from the date of submission of self certificates which is correct and complete in all respect.

Merger & Acquisition guidelines will be issued separately.

ANNEXURE XXII

REFERENCE MADE BY THE DEPARTMENT OF TELECOMMUNICATIONS TO
THE MINISTRY OF LAW DATED 26 OCTOBER, 2007 TO PROVIDE OPINION
OF THE ATTORNEY GENERAL/SOLICITOR GENERAL FOR INDIA

K. SRIDHARA

सदस्य (प्रौद्योगिकी) एवं
पदेन सचिव, भारत सरकार
Member (Technology) Telecom Commission
& Ex-officio Secretary to Government of India
Tel.: 23372307, Fax: 23372353



भारत सरकार
संचार एवं सूचना प्रौद्योगिकी मंत्रालय
दूरसंचार विभाग
संचार भवन, 20, अशोक रोड,
नई दिल्ली-110 001
Government of India
Ministry of Communications and
Information Technology
Department of Telecommunications
Sanchar Bhawan, 20, Ashok Road,
New Delhi-110 001

No. 20-161/2007-AS-1

Dated: 26th October, 2007

Sub: Seeking opinion of Learned Attorney General of India/Solicitor General of India on grant of new Unified Access Service (UAS) Licenses and approval for use of Dual Technology Spectrum by UAS Licensee(s).

TRAI has submitted its recommendations to the Government in the matter of "Review of license terms and conditions and capping of number of access providers". Based on these recommendations decisions have been taken by the Government and the same was notified through Press Release dated 19.10.2007. There has been a spurt in the number of applications received by DOT for grant of UAS licenses after receipt of the said TRAI recommendations.

To deal with the situation for grant of new licences as well as grant of approval for use dual technology spectrum to the existing operators, a number of alternatives are available. The same has been brought out in the statement of case enclosed herewith.

It is requested that the opinion of Ld. Attorney General of India/Solicitor General of India may please be communicated on this issue so as to enable DoT to handle such unprecedented situation in a fair and equitable manner which would be legally tenable.

Encl.: Statement of case.

Sd/-

(K. Sridhara)
Member (Technology)

Secretary
Department of Legal Affairs,
Ministry of Law and Justice,
Shastri Bhawan, New Delhi.

**STATEMENT OF CAES
FOR SEEKING OPINION OF THE LEARNED
ATTORNEY GENERAL OF INDIA/SOLICITOR GENERAL OF INDIA
IN THE MATTER OF UNIFIED ACCESS SERVICES LICENSING**

Sub: Seeking opinion of Learned Attorney General of India/Solicitor General of India on grant of new Unified Access Service (UAS) Licenses and approval for use of Dual Technology Spectrum by UAS Licensee(s).

The policy for licensing of Unified Access Service was announced in November, 2003 and the applicants were submitting the applications for grant of UAS licenses as per the guidelines announced by the Government. Copy of the guidelines dated 11.11.2003 and amended guidelines issued on 14.12.2005 (Appendix-I and II) are also available on DOT website www.dotindia.com. The number of UASL applications has been increasing and there were already about 5 to 8 licensed Access Service Provider in each service area. The increase in number of applications had increased the demand of GSM spectrum in a substantial manner. Therefore, a reference was made to TRAI on 13.4.2007 seeking their recommendations whether to consider to put a limit on the number of access service providers in each service area keeping in view that spectrum is a scarce resource and to ensure that adequate quantity of spectrum is available to existing licensees. TRAI was also requested to give its recommendation on certain other terms and conditions of Access Service Providers licences. The recommendations of TRAI were received on 29th August, 2007 (Appendix-III).

2. It was observed that there has been a spurt in the number of applications received by DoT for grant of UAS licenses after receipt of TRAI recommendations including no cap on number of licences in any service area. Therefore, a cut-off date was announced as 1.10.2007 stating that no new UASL application will be received after this cut-off date till further orders. A copy of Press Release dated 24.9.2007 which appeared in press on 25.9.2007, in this regard is placed at Appendix-IV.

3. To examine the TRAI's recommendations, a committee was set up under the Chairmanship of Member (Technology) which gave its comments to DoT which were placed before the Telecom Commission. Hon'ble MOC&IT decided on the recommendations of TRAI based on the comments of the committee under Member (T) and Telecom Commission on 17.10.2007 and 18.10.2007. Accordingly Press Release submitted on 18.10.2007 was approved on 19.10.2007 and the Press Release was published by PIB on the website and circulated to Press on 19.10.2007 itself announcing the Government decision on TRAI's recommendation. A copy of Press Release dated 19.10.2007 is placed at Appendix-V. TRAI's recommendation, *inter alia*, that there should be no cap on the number of access providers in a service area has been accepted by the Government.

4. The approved policy by the Government dated 17/18.10.2007 also included approval of usage of Dual Technology spectrum to be allocated under the same UAS license *i.e.* CDMA operators can be permitted usage of GSM spectrum and *vice versa* subject to payment of requisite fee and date of priority (for allocation of spectrum) shall be the date of payment of required fee [which is equal to the entry fee which has been paid by existing licensees under using one technology (GSM or CDMA) or which would be paid by a new UAS licensee in each service area]. In terms of the approved policy, M/s. Reliance Communications Limited, M/s. HFCL Infotel Limited and M/s. Shyam Telelink Limited were conveyed In-Principle-Approval

for use of dual technology spectrum and asked on 18.10.2007 to pay the applicable fee within 15 days for use of Dual Technology spectrum (*i.e.* for GSM in addition to CDMA technology) as their request for GSM spectrum was pending with the Government (*i.e.* request dt. 6.2.2006 and subsequent requests from M/s. Reliance Communications Limited, request dt. 11.7.2006 from M/s. HFCL Infotel Limited and request dt. 7.8.2006 from M/s. Shyam Telelink Limited). Accordingly, M/s. Reliance Communications Limited has paid the requisite fee amounting to Rs. 1651.5701 crores on 19.10.2007.

5. Subsequently on 22.10.2007 M/s. TATA who are UASL operators in 20 service areas has also applied for Dual Technology spectrum (*i.e.* for GSM in addition to CDMA technology). A decision is required to be taken in this case.

6. It is mentioned that 575 applications for UASL licenses have been received till the cut-off date from 46 applicant companies in respect of 22 service areas in the country. Government is yet to decide on processing of these pending applications for grant of UAS licenses based on availability of spectrum and other issues.

7. The procedure followed hereto for grant of LOIs/licenses in respect of pending UASL applications has been to process them sequentially in order of receipt (date-wise) and take up the next applicant after the earlier applicant has been given LOI, as the number of applications were limited and all applicants were assured that they will get LOI/Licence/Spectrum in near future. DoT was also asking the applicants to provide certain clarifications on information submitted by applicants if the information already available in the application was not having clarity or insufficient including certain documents and compliances before issue of LOIs. In the present scenario the number of applications are very large and spectrum is limited and it may not be possible for the Government to provide LOI/Licence/Spectrum to all applicants at all if the existing procedure is followed. Moreover, existing procedure of sequential processing will also lead to inordinate delays depriving the general public of the benefits which more competition will bring out.

8. To deal with such unprecedented situation, there is a need to adopt a methodology which synchronize with legal base in processing of pending UASL applications and allotment of spectrum to various categories of spectrum seekers such as:

- (a) Additional requirements of Existing operators.
- (b) Initial allocation of spectrum to existing licensees and requirements for dual technology.
- (c) Spectrum to new UASL applicants.

9. A decision on number of new licensees per service area will be taken on the basis of availability of spectrum as indicated by WPC Wing keeping in view the requirements of existing operators for expansion of their networks for next one year based on the policy of allotment of spectrum.

10. M/s. TATA are existing operator using CDMA technology in 20 service areas and their request for alternate technology spectrum in GSM was received for DoT on 22.10.2007. The date of priority for spectrum allocation may be the date of payment of required fee for each service area. Their request for permission shall be taken up alongwith new applicants as in Para 11 below.

Similarly it is proposed to give approvals for usage of alternate technology to other UASL operators, presently using any one of the wireless access technology (GSM or CDMA) on payment of required fee. However, in order to ensure that only serious players are to be considered, such requests for dual technology spectrum may be considered only from those applicants who completes the existing roll out criterion in their UAS Licences.

11. The following alternatives emerge to deal with new applications:

Alternative I

The applications may be processed on first-come-first served basis in chronological order of receipt of applications in each service area as per existing procedure, LOI may be issued simultaneously to applicants (the numbers will vary based on availability of spectrum to be ascertained from WPC Wing) who fulfil the eligibility conditions of the existing UASL guidelines and are senior most in the queue. The time limit for compliance should be 7 days as per the existing provision of LOI and 15 days for submission of PBG, FBG, entry fee etc. as per existing procedure. However, those who fulfil the conditions of LOI within stipulated time, their seniority for licence/spectrum will be on the basis of their application date. The compliance to eligibility conditions as on date of issue of LOI may be accepted. No relaxation of this time limit will be given and the LOI shall stand terminated after the stipulated time period. (However, the applicant may have the right to apply for new UASL licence again as and when the window for submission of application of new UAS Licence is opened again). Subsequent applicants may be considered for issue of LOI if the spectrum is available.

Alternative II

LOIs to all those who applied by 25.9.2007 (the date on which the cut-off date for receipt of applications were made public through press) may be issued in each service area as it is expected that only serious players will deposit the entry fee and seniority for licence/spectrum be based on:

- (i) the date of application,
- or
- (ii) the date/time of fulfilment of all LOI conditions.

Alternative III

DoT may issue LOIs to all eligible applications simultaneously received up to cut-off date. Since LOIs will clearly stipulate that spectrum allocation is subject to availability and is not guaranteed the LOI holders are supposed to pay the entry fee if their business case permits them to wait for spectrum allocation subject to availability and initial roll out using wireline technology.

Alternative IV

Any other better approach which may be legally tenable and sustainable for issuance of new licences.

12. It is also to be considered if the eligibility criterion or other conditions of UASL guidelines can be changed at this stage for grant of LOIs to pending applicants by making some stringent conditions such as network, roll out obligations, experience etc. If yes, then what should be the procedure to be followed?

13. Issue of LOI's to M/s. TATA and others for usage of Dual Technology spectrum based on their applications received after 18.10.2007. Whether

- (i) To treat their request prior to existing applicants,
- or
- (ii) To treat their request after processing all 575 applications.

14. **Opinion Sought**

Opinion of Learned Attorney General of India/Solicitor General of India is solicited on different alternatives mentioned in Paras 10 to 13.

Enclosures: (i) Appendix-I to V.

(ii) New Telecom Policy (NTP) 1999: Appendix VI.

(iii) Addendum to NTP 1999: Appendix VII.

ANNEXURE XXIII

ACKNOWLEDGEMENT OF THE LETTER OF THE MINISTER OF
COMMUNICATIONS & INFORMATION TECHNOLOGY
BY THE PRIME MINISTER ON 21 NOVEMBER, 2007



प्रधान मंत्री
Prime Minister

New Delhi
21 November, 2007

Dear Shri Raja,

I have received your letter of 15 November, 2007 regarding the recent developments in the telecom sector.

With warm regards,

Yours sincerely,

(Manmohan Singh)

Shri A. Raja
Minister of Communications and Information Technology
New Delhi

ANNEXURE XXIV

NOTE DATED 17 DECEMBER, 2007 BY DIRECTOR (INFRA) IN THE
DEPARTMENT OF ECONOMIC AFFAIRS ON ISSUES RELATING TO
REVISION OF ENTRY FEE AND SPECTRUM ALLOCATION

December 17, 2007

Subject: Telecom spectrum allocation and pricing

I. Please see remarks of FM on page 56-59/a. He has desired to see the reply to FS's letter from Secretary, DoT:

- (i) Reply dated November 29, 2007 is placed at page 637/c.
- (ii) Copy of the Cabinet decision referred to in Secretary (DoT)'s letter is placed at page 636/c.
- (iii) Copy of the Cabinet note on which the decision was taken is placed at page 622/c.
- (iv) Copy of the NTP 1999 is placed at page 647/c.
- (v) Copy of the TRAI's recommendations of August 2007 is placed at page 217/c.
- (vi) Copy of the guidelines issued by DoT based on TRAI recommendations is placed at page 195/c.

II. Secretary, DoT states as follows:

- (a) In terms of the cabinet decision of 2003, amendment to NTP was done on November 11, 2003.
- (b) The amendment declared that UAS licenses would be given for both basic and cellular services.
- (c) Entry fee was finalized for UAS as per cabinet decision—the entry fee for UAS was kept the same as the entry fee for the fourth cellular operator discovered through bidding process in 2001.
- (d) Dual technology licenses were issued based on TRAI recommendations of August 2007. TRAI has not recommended any change in entry fee and therefore, no changes were made to the existing policy.

III. The Cabinet Note on which decision was taken proposed the following, among other things (see para 2.4.6 of the cabinet note):

- (a) Enhancement of the scope of NTP-99 to provide for UAS licensing.
- (b) Acceptance of the recommendations of TRAI for implementation of the UASL regime. DoT to be authorized to calculate entry fee based on the principles given by TRAI in its recommendations with the approval of the Minister, IT.

IV. Recommendations of TRAI which have been shown in the note at para 2.4.3 speak of the fee paid by the fourth cellular operator to be the benchmark for migration of basic players to the new access regime, while for cellular operators there would be no fee. The recommendations of TRAI do not seem to suggest that the fourth operator fee should be the benchmark for the entry fee for new licensees. And therefore, we cannot state unequivocally that the interpretation that the 2003 cabinet decision allowed the entry fee for new operators to be fixed at the 2001 bid levels is correct. There is much ambiguity in this interpretation of the DoT unless they can show other papers/decisions to support their view. They would probably show their internal decision with the approval of the Minister in which they must have calculated the entry fee. However, it is difficult to say that this was as per TRAI recommendations if the synopsis given in para 2.4.3 is read without bias or pre-conceived notions.

V. The TRAI recommendations of August 2007:

The recommendation of consequence is on page 332/c, para 4.27 of the Report of TRAI wherein it is stated that "The Authority recommends that a licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternative technology or which would be paid by a new licensee going to use that technology".

VI. DoT guidelines echo the TRAI recommendations in respect of technology crossover.

VII. It is true that the TRAI has not recommended any increase in the entry fee for technology crossover. The issue basically boils down to the fixation of entry fee and whether the 2003 cabinet decision is unequivocal in stating that the entry fee would be fixed as per the fourth licensee bids of 2001. It is our view that the Cabinet decision does not support such a view from whatever material DoT has been gracious enough to supply to us. This has been discussed above. However, it is also true that the DoT has fixed the entry fee according to the fourth licensee bid prices of 2001. The issue is whether it was right in doing so and not revising the entry fee for such a very long time. On the issue of entry fee, comments of infrastructure division have been given on pages 51-52/n which are once again reproduced below:

- (i) Essentially, it may not be correct to say that the increase in entry fee which is presently based on the 2001 auction will increase the cost of service. The assumption underlying the DoT statement (in discussion) is that the increase will be directly passed on the consumers. This may not be correct to the extent that if the operator is able to utilize spectrum more efficiently, there will be no extra costs to pass on. The increase will spur him to be more efficient because of the competition in the sector.
- (ii) The basis of argument of those who are for increasing the price of entry and perhaps price discovery through auction is essentially that it would force the operators to utilize spectrum more efficiently and to invest more in efficiency increasing measures which they may not be doing today as there is less disincentive for not doing so.
- (iii) Therefore, economically there would be a case for increasing the entry fee for technology crossover. The entry fee could be calculated on the base of the 2001 auction price weighted with the improvement in technology, and demand in terms of subscribers as well as per subscriber traffic.
- (iv) DEA could take up this issue with the DoT and ask them to revise the entry fee. Initially, TRAI could look into a scientific method of doing so and make its recommendations. This issue should be decided by the DoT after the inter-ministerial consultations.

Alternatively, as this issue has generated a lot of heat, a GoM could look into all the issues at length and pronounce its verdict on the same. However, then the issue also arises of whether such decision taken in future to revise entry fee would become applicable to those who have already paid the prescribed fee to DoT and have got the Lols issued in their favour. If not, the issue arises of how palatable this decision would be to new players who want to crossover.

VIII. Submitted.

Sd/-

(Shyamala Shukla)
Director (Infrastructure)

JS (Infra) (O.T.)
AS (EA)

ANNEXURE XXV

NOTE DATED 9 JANUARY, 2008 BY THE ADDITIONAL SECRETARY,
DEPARTMENT OF ECONOMIC AFFAIRS ALONGWITH THE
POSITION PAPER ON SPECTRUM POLICY

MINISTRY OF FINANCE
Department of Economic Affairs

Subject: Spectrum Policy

References: (i) Letter No. 10709/FS/2007 dated 22.11.2007 from FS to Secretary, Telecom
(ii) Reply received from Secretary, Telecom—D.O. No. 20-165/2007-AS-I
dated 29.11.2007.

FM had instructed that the prolific Press reports over the last two months relating to pricing of spectrum and the “Telecom Wars” may be tracked.

2. The Press reports relate to a variety of issues. These include:

- DoTs decisions on the pending applications for Licensees (for which a deadline of September 25th was declared on October 1st 2007 by DoT);
- 2G and 3G Spectrum: the quantum available, the methods of allocation and pricing thereof;
- DTH and Broadband coverage;
- TRAI recommendations on the subject at different times on the above;
- Views of Competition Commission on number of players in Telecom.

The common theme underlying all the issues relate to a range of technologies now available under the rubric of Telecom—from telephony, video, television to broadband DTH etc. (In other words, transmission of Voice, Mail, Data and Broadcasting through hand held mobile devices). The radio frequency to be used for the technology is scarce. The media interest in DoT and its decisions is on account of its being the custodian of the radio frequencies spectrum, responsible for its allocation as well as the Authority to issue licenses to operators—in the Telecom sector.

3. A position paper has been prepared on the most contentious issue that is currently enjoying public attention, *i.e.* allocation of additional licences and 2G Spectrum to existing and new entrants. The draft of the position paper was discussed with FS and the final draft is enclosed.

4. The full Telecom Commission was scheduled to meet today. However, the meeting has now been postponed to 15th January 2008. Finance Secretary has desired that I may represent him in the meeting.

Sd/-
(Sindhushree Khullar)
Additional Secretary (EA)
9.1.2008

FS
FM

DEPARTMENT OF ECONOMIC AFFAIRS

Position Paper on Spectrum Policy

References:

- (i) Letter No. 10709/FS/2007 dated 22.11.2007 from FS to Secretary, Telecom
- (ii) Reply received from Secretary, Telecom—D.O. No. 20-165/2007-AS-I dated 29.11.2007
- (iii) Agenda for the Cabinet dated 31st October, 2003
- (iv) New Telecom Policy, 1999 and amendment dated 11th November, 2003

Present Arrangements

1. The Statutory basis for grant of wireless license:

- The Indian Telegraph Act, 1885 (ITA, 1885) and rules made thereunder provide statutory basis for grant of licences by the Central Government for establishment, maintenance or working of wireless apparatus, equipment and appliances.
- The Indian Wireless Telegraphy Act, 1933 (IWTA 1933) and rules made thereunder, provide the Central Government with powers to grant licences for possession of such wireless apparatus, equipment and appliances.
- Wireless Planning and Coordination (WPC) Wing of Ministry of Communications & IT exercises powers to the Central Government for grant of such licences under Section 4 of the ITA, 1885 and Section 5 of IWTA, 1933.

1.1 The chronology of Service Licence procedures is at **Annexure-I**.

2. In 2003, the Cabinet decided to allow licensees to provide all telecom/telegraphic services using any technology, and also approved an addendum to NTP-99 enabling.

- (i) Licensees to migrate to Unified Access Service (UAS) License; and
- (ii) Government to issue new UAS Licences.
[Under a UAS License, the Licensee can provide wire line and/or wireless services. The allocation of spectrum, if required, is subject to availability]

3.1 The Cabinet also approved the GoM recommendations on release of adequate spectrum needed for the growth of the telecom sector. GoM recommended *inter alia*—

- (1) The Department of Telecom and Ministry of Finance would discuss and finalise spectrum pricing formula, which will include incentive for efficient use of spectrum as well as disincentive for sub-optimal usages.
- (2) The allotment of additional spectrum be transparent fair and equitable avoiding monopolistic situation regarding spectrum allotment/usage.
- (3) The long term (5/10 years) spectrum requirements along with time frames would also be worked out by Department of Telecom.

3.2 In addition, Cabinet approved, that DoT may be authorized "to finalise the details of implementation with the approval of the Minister of Communications and IT in this regard, including the calculation of the entry fee depending upon the date of payment, based on the principles given by TRAI in its recommendations".

The Agenda Note for the Cabinet dated 31st October 2003 is at Reference (iii) (Encl.)

4. Currently, Government gets payment/revenue from Unified Access Service License (UAS) holders of both GSM and CDMA technology under three streams/routes.

- (i) Entry fee fixed on the basis of highest bid received in 2001 auction of licenses (Rs. 1651 crore if operating over the entire country corresponding to circle specific fees).

[Entry Fee was fixed on the basis of the highest bid received in the license auction in 2001. There were three rounds of bids in 2001. The highest bid in the first round was used as the reserve price for the second round and the higher price in the second round was used as the reserve price for the third round. The bid was finally closed in the third round. DoT states that this is not in the nature of Spectrum charges or License Fee]

- (ii) (a) Spectrum charges fixed at 2%, 3%, 4% of Adjusted Gross Revenue (AGR) depending on the Spectrum Bandwidth Separate criteria exist for GSM and CDMA operators. A detailed table indicating the range of spectrum charges and the allocated bandwidth is placed in Annexure II(a)).

(b) Start up Spectrum allocated as a part of the license linked to subscriber base.
[Annexure II(b)]

[At present initial allotment is in accordance with the relevant provisions of the service License Agreement. Clauses 43.5(i) and 43.5(ii) of the Service License Agreement stipulates that "initially a cumulative maximum of up to 4.4 MHz + 4.4 MHz shall be allocated in the case of TDMA based systems @ 200 KHz per carrier or 30 KHz per carrier or a maximum of 2.5 MHz + 2.5 MHz shall be allocated in the case of CDMA base systems @ 1.25 MHz per carrier, on case by case basis subject to availability".

"Additional spectrum beyond the above stipulation may also be considered for allocation after ensuring optimal and efficient utilization of the already allocated spectrum taken into account all types of traffic and guidelines/criteria prescribed from time to time"]

- (iii) Revenue share as percentage of Adjusted Gross Revenue (AGR). (In 2001 spectrum charges for Cellular/Basic/WLL services were changed over to revenue share w.e.f. 1.8.1999, the date of implementation of NTP 1999. The license fee is paid as a percentage of Adjusted Gross Revenue (AGR) earned by all operators except for Pure Value Added Service Providers, Voice Mail, E-Mail and Internet Service Provider, as defined in the License Agreement]

4.1 The rates of License Fee (Revenue Share) for Basic/UASL and CMTS services inclusive of universal service levy are as under:

Category	Service	Rate of License Fee (1.8.1999 to 24.1.2001)	Rate of License Fee* (from 25.1.2001 to 30.3.2004)	Rate of License Fee* (w.e.f. 1.4.2004)
A.	**Cellular/Basic/USAL	Provisional License Fee as revenue share @ 15% of AGR (8% for A and N Islands and J and K)	12%	10%
B.	Cellular/Basic/USAL		10%	8%
C.	Cellular/Basic/USAL		8%	6%

Note:

* The License fee includes the contribution for Universal Service Obligation Fund as USL which is 5% of AGR.

** For the first two circle cellular operators (license awarded before 1999) there is an additional relief of 2% for four years w.e.f. 1.4.2004, This is subject to a minimum of equivalent to the contribution for USO Fund and this is 5% of AGR.

Source:

Report of the Departmental Sub-Committee on Taxes and Levies applicable In the Telecommunication Sector, December 2007 (page 13), DoT, M/o Communications & Information Technology.

5. Policy objectives in fixing Entry Fee, Licence Fee and Spectrum charges

- Making telecom services accessible to all.
- Efficient allocation of a scarce good (Spectrum) owned by Government.
- Revenue maximization, The levies are Non-Tax revenues of Government.

Options before us

6. (?) Review Entry Fee:

6.1 The entry fee regulates the number of service providers. As of July 2007 there are over 180 licensed Cellular and Unified Access Service Providers in 23 telecom service areas, six to seven million subscribers are being added on an average to the network every month. 159 licenses have been issued for providing Access Services/CMTS/UASL/Basic. The number of service providers in each service area with their market share as on quarter ending June 2007 is in Annexure III.

6.2 TRAI recommendations (August 2007) do not favour a cap to be placed on the number of Access Service Providers in any service area.

6.3 Given the fact that there are reportedly over 575 applications pending with DoT (including 45 new applicants) there is a case for reviewing the entry fee fixed in 2001. This is an administratively fixed fee. Therefore any change should be governed by transparent and objective criteria applicable uniformly to all new entrants.

7. (?) Review Revenue share percentages:

7.1 There has been a persistent demand for reduction of revenue share as percentage AGR from the Industry Associations. The Departmental Sub-Committee chaired by Member (Finance), DoT recommends that the present revenue share rates on License fee may remain. Revenue implications of revising revenue shares on alternate scenarios are at Annexure IV.

7.2 Revenue share as a percentage of AGR is a fee for Licence and is linked to the subscriber base. The AGR is part of the normal profits of the operator. The standard argument of the Industry is that an increase in revenue share erodes their margins forcing them to pass on the cost to the subscriber/customer thereby compromising the target of expanding coverage.

7.3 There is a strong case for revising the rates of revenue share percentages for both existing Licensees and new entrants because intense competition and aggressive subscriber acquisition by various operators will ensure that tariffs, particularly for pure telephone usage alone will be beaten down. It is a widely known fact that profit margins are mostly on value added services and not on telephone calls.

7.4 The alternative methods of revising the percentage revenue share based on AGR, for Licence Fee to be paid annually, could be:

- (a) Indexed to growth of the sector: or
- (b) Auction based on transparent rules. The highest/second highest bid for percentage of revenue share would be the successful bidder.

8. (?) Review Spectrum Charges:

8.1 The most contentious issue relates to spectrum allocation, There is no disagreement that the price charged for spectrum should be based on its scarcity value, efficient usage and that the process of allocation should be transparent and fair. The payment is for a real economic resource. It is not a fee. According to DoT it is closer to royalty charged on Coal, Crude and Natural Gas.

8.2 Additional spectrum as available has to be allocated to

- (a) Existing Licensees in GSM;
- (b) Existing Licensees in CDMA;
- (c) New applicants for Licenses in GSM; and
- (d) New applicants for Licenses in CDMA or any combination of the two technologies.

8.3 The most transparent method of allocation of spectrum would be by auction. However, there are two caveats to the auction method.

- (a) The ways in which the existing licensees in GSM and CDMA would be eligible to participate in the auction *vis-a-vis* the new entrants; and
- (b) The advantages and disadvantages of the method itself. A detailed table is placed at Annexure V.

The possible non-optimal outcomes can be taken care of by prescribing suitable rules of auction before the bid in a transparent manner applicable to all eligible bidders. Any other method for allocating spectrum, being a scarce resource, would be economically inefficient.

9. The TRAI recommendations August, 2007 suggested a Multidisciplinary Committee to be constituted consisting of representatives from DoT/TEC, TRAI, WPC Wing, COAI and AUSPI to frame new spectrum allocation criteria.

9.1 The efficient usage of spectrum is a technical issue. It is learnt that a Departmental Committee headed by Additional Secretary (Telecom) has recently given recommendations to DoT on the technical criteria for allocation of spectrum based on TRAI recommendations, 2007.

In addition, the Telecom Engineering Centre (TEC) has also made recommendations on the technical criteria for allocation of spectrum. However, the details of these recommendations are not available. Nevertheless, regardless of the allocation criteria, auction has been recommended with transparent rules as the most suitable method of allocating spectrum. The quantum of spectrum available for auction in 2G is to be decided by DoT.

9.2 The quantum available will have to be allocated through the most appropriate method accepted by the Government to existing operators as well as to the new entrants who have applied for the same until the cut off date stipulated by DoT. A decision is yet to be taken by DoT on this issue.

10. The foregoing discussion relates only to 2G Spectrum that is the subject matter of recent petitions to MoF and Press reports ("Telecom Wars").

(1) Enclosures: Annexure I to IV

(2) Sources:

- (1) Report of the Departmental Sub-Committee on Taxes and Levies applicable in the Telecommunication Sector, December, 2007 by Department of Telecommunications (Ministry of Communications and Information Technology).
- (2) TRAI recommendations on review of terms and conditions and capping of number of access providers, New Delhi, August 28, 2007.
- (3) TRAI recommendations on Spectrum related issues May 13, 2005.
- (4) Paper on allocation of additional spectrum to Mobile Operators, July 2005 (MoF files).
- (5) Advantages and Disadvantages of spectrum auction-TRAI Consultation paper.

COPY OF THE AMENDED PRESS RELEASE BY THE MINISTER OF
COMMUNICATIONS & INFORMATION TECHNOLOGY

Press Release

In the light of Unified Access Services Licence (UASL) guidelines issued on 14th December 2005 by the department regarding number of Licences in a Service Area, a reference was made to TRAI on 13.4.2007. The TRAI on 28.8.2007 recommended that No cap be placed on the number of access service providers in any service area. The Government accepted this recommendation of TRAI. Hon'ble Prime Minister also emphasized on increased competition while inaugurating India Telecom 2007. Accordingly, DoT has decided to issue LOI to all the eligible applicants who applied upto 25.9.2007.

UAS licence authorises licensee to rollout telecom access services using any digital technology which includes wire-line and/or wireless (GSM and/or CDMA) services. They can also provide Internet Telephony, Internet Services and Broadband services. UAS licence in broader terms is an umbrella licence and does not automatically authorize UAS licensee's usage of spectrum to rollout Mobile (GSM and/or CDMA) services. For this, UAS licensee has to obtain another licence, i.e. Wireless Operating Licence which is granted on first-come-first-serve basis subject to availability of spectrum in particular service area.

DoT has been implementing a policy of First-cum-First Served for grant of UAS licences under which initially an application which is received first will be processed first and thereafter if found eligible will be granted LOI and then who so ever complies with the conditions of LOI first will be granted UAS licence.

However, if more than one applicant complies with LOI condition on the same date, the inter-se seniority would be decided by the date of application.

X' is not necessary as it is new regulation
J2
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ANNEXURE XXVII

A STATEMENT SHOWING NAME OF THE LICENSEE COMPANY, SERVICE AREA AND EFFECTIVE DATE OF LICENSE

List of 122 UAS licences issued in year 2008

Sl. No.	Name of service Area	Name of Company	Date of Application	Effective date of licence
1	2	3	4	5
1.	Assam	Tata Teleservices Ltd.	21 June-2006	25-January-2008
2.	Jammu and Kashmir	Tata Teleservices Ltd.	21-June-2006	25-January-2008
3.	North East	Tata Teleservices Ltd.	21-June-2006	25-January-2008
4.	Assam	Idea Cellular Ltd.	26-June-2006	25-January-2008
5.	Jammu and Kashmir	Idea Cellular Ltd.	26-June-2006	25-January-2008
6.	Karnataka	Idea Cellular Ltd.	26-June-2006	25-January-2008
7.	Kolkata	Idea Cellular Ltd.	26-June-2006	25-January-2008
8.	North East	Idea Cellular Ltd.	26-June-2006	25-January-2008
9.	Odisha	Idea Cellular Ltd.	26-June-2006	25-January-2008
10.	Punjab	Idea Cellular Ltd.	26-June-2006	25-January-2008
11.	Tamil Nadu (including Chennai)	Idea Cellular Ltd.	26-June-2006	25-January-2008
12.	West Bengal	Idea Cellular Ltd.	26-June-2006	25-January-2008
13.	Andhra Pradesh	Spice Communications Ltd.	31-August-2006	25-January-2008
14.	Delhi	Spice Communications Ltd.	31-August-2006	25-January-2008
15.	Haryana	Spice Communications Ltd.	31-August-2006	25-January-2008
16.	Maharashtra	Spice Communications Ltd.	31-August-2006	25-January-2008
17.	Andhra Pradesh	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
18.	Delhi	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
19.	Gujarat	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
20.	Haryana	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
21.	Karnataka	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008

1	2	3	4	5
22.	Kerala	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
23.	Maharashtra	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
24.	Mumbai	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
25.	Punjab	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
26.	Rajasthan	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
27.	Tamil Nadu (including Chennai)	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
28.	Uttar Pradesh (East)	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
29.	Uttar Pradesh (West)	Etisalat DB Telecom Pvt. Ltd.	2-March-2007	25-January-2008
30.	Assam	S Tel. Pvt. Ltd.	7-July-2007	25-January-2008
31.	Bihar	S Tel. Pvt. Ltd.	7-July-2007	25-January-2008
32.	Himachal Pradesh	S Tel. Pvt. Ltd.	7-July-2007	25-January-2008
33.	Jammu and Kashmir	S Tel. Pvt. Ltd.	7-July-2007	25-January-2008
34.	North East	S Tel. Pvt. Ltd.	7-July-2007	25-January-2008
35.	Odisha	S Tel. Pvt. Ltd.	7-July-2007	25-January-2008
36.	Andhra Pradesh	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
37.	Assam	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
38.	Bihar	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
39.	Delhi	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
40.	Gujarat	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
41.	Haryana	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
42.	Himachal Pradesh	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
43.	Jammu and Kashmir	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
44.	Karnataka	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
45.	Kerala	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
46.	Kolkata	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
47.	Madhya Pradesh	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
48.	Maharashtra	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
49.	Mumbai	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
50.	North East	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
51.	Odisha	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008

1	2	3	4	5
52.	Rajasthan	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
53.	Tamil Nadu (including Chennai)	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
54.	Uttar Pradesh (East)	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
55.	Uttar Pradesh (West)	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
56.	West Bengal	Videocon Telecommunications Ltd.	28-August-2007	25-January-2008
57.	Andhra Pradesh	Loop Telecom Ltd.	6-September-2007	25-January-2008
58.	Assam	Loop Telecom Ltd.	6-September-2007	25-January-2008
59.	Bihar	Loop Telecom Ltd.	6-September-2007	25-January-2008
60.	Delhi	Loop Telecom Ltd.	6-September-2007	25-January-2008
61.	Gujarat	Loop Telecom Ltd.	6-September-2007	25-January-2008
62.	Haryana	Loop Telecom Ltd.	6-September-2007	25-January-2008
63.	Himachal Pradesh	Loop Telecom Ltd.	6-September-2007	25-January-2008
64.	Jammu and Kashmir	Loop Telecom Ltd.	6-September-2007	25-January-2008
65.	Karnataka	Loop Telecom Ltd.	6-September-2007	25-January-2008
66.	Kerala	Loop Telecom Ltd.	6-September-2007	25-January-2008
67.	Kolkata	Loop Telecom Ltd.	6-September-2007	25-January-2008
68.	Madhya Pradesh	Loop Telecom Ltd.	6-September-2007	25-January-2008
69.	Maharashtra	Loop Telecom Ltd.	6-September-2007	25-January-2008
70.	North East	Loop Telecom Ltd.	6-September-2007	25-January-2008
71.	Odisha	Loop Telecom Ltd.	6-September-2007	25-January-2008
72.	Punjab	Loop Telecom Ltd.	6-September-2007	25-January-2008
73.	Rajasthan	Loop Telecom Ltd.	6-September-2007	25-January-2008
74.	Tamil Nadu (Including Chennai)	Loop Telecom Ltd.	6-September-2007	25-January-2008
75.	Uttar Pradesh (East)	Loop Telecom Ltd.	6-September-2007	25-January-2008
76.	Uttar Pradesh (West)	Loop Telecom Ltd.	6-September-2007	25-January-2008
77.	West Bengal	Loop Telecom Ltd.	6-September-2007	25-January-2008
78.	Andhra Pradesh	Unitech Wireless (South) Pvt. Ltd.	24-September-2007	25-January-2008
79.	Assam	Unitech Wireless (East) Pvt. Ltd.	24-September-2007	25-January-2008
80.	Bihar	Unitech Wireless (East) Pvt. Ltd.	24-September-2007	25-January-2008

1	2	3	4	5
81.	Delhi	Unitech Wireless (Delhi) Pvt. Ltd.	24-September-2007	25-January-2008
82.	Gujarat	Unitech Wireless (West) Pvt. Ltd.	24-September-2007	25-January-2008
83.	Haryana	Unitech Wireless (North) Pvt. Ltd.	24-September-2007	25-January-2008
84.	Himachal Pradesh	Unitech Wireless (North) Pvt. Ltd.	24-September-2007	25-January-2008
85.	Jammu and Kashmir	Unitech Wireless (North) Pvt. Ltd.	24-September-2007	25-January-2008
86.	Karnataka	Unitech Wireless (South) Pvt. Ltd.	24-September-2007	25-January-2008
87.	Kerala	Unitech Wireless (South) Pvt. Ltd.	24-September-2007	25-January-2008
88.	Kolkata	Unitech Wireless (Kolkata) Pvt. Ltd.	24-September-2007	25-January-2008
89.	Madhya Pradesh	Unitech Wireless (West) Pvt. Ltd.	24-September-2007	25-January-2008
90.	Maharashtra	Unitech Wireless (West) Pvt. Ltd.	24-September-2007	25-January-2008
91.	Mumbai	Unitech Wireless (Mumbai) Pvt. Ltd.	24-September-2007	25-January-2008
92.	North East	Unitech Wireless (East) Pvt. Ltd.	24-September-2007	25-January-2008
93.	Odisha	Unitech Wireless (East) Pvt. Ltd.	24-September-2007	25-January-2008
94.	Punjab	Unitech Wireless (North) Pvt. Ltd.	24-September-2007	25-January-2008
95.	Rajasthan	Unitech Wireless (North) Pvt. Ltd.	24-September-2007	25-January-2008
96.	Tamil Nadu (Including Chennai)	Unitech Wireless (Tamil Nadu) Pvt. Ltd.	24-September-2007	25-January-2008
97.	Uttar Pradesh (East)	Unitech Wireless (East) Pvt. Ltd.	24-September-2007	25-January-2008
98.	Uttar Pradesh (West)	Unitech Wireless (North) Pvt. Ltd.	24-September-2007	25-January-2008
99.	West Bengal	Unitech Wireless (East) Pvt. Ltd.	24-September-2007	25-January-2008
100.	Andhra Pradesh	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
101.	Assam	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
102.	Bihar	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
103.	Delhi	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
104.	Gujarat	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
105.	Haryana	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
106.	Himachal Pradesh	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
107.	Jammu and Kashmir	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
108.	Karnataka	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
109.	Kerala	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
110.	Kolkata	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008

1	2	3	4	5
111.	Madhya Pradesh	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
112.	Maharashtra	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
113.	Mumbai	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
114.	North East	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
115.	Odisha	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
116.	Punjab	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
117.	Tamil Nadu (Including Chennai)	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
118.	Uttar Pradesh (East)	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
119.	Uttar Pradesh (West)	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
120.	West Bengal	Sistema Shyam TeleServices Ltd.	25-September-2007	25-January-2008
121.	Bihar	Alianz Infratech Pvt. Ltd.	6-September-2007	31-July-2008
122.	Madhya Pradesh	Alianz Infratech Pvt. Ltd.	6-September-2007	31-July-2008