

REPORT

PART – I

CHAPTER - I

BACKGROUND

1.1 In recent times, India has emerged as one of the most dynamic and promising and fastest growing telecom markets in the world. It has third largest overall telecom network and the second largest wireless network in the world. Mobile telephony and thus Spectrum have played a vital role in the stupendous growth of the telecom services in India. The word 'Spectrum' basically refers to a collection of various types of electromagnetic radiations of different wavelengths. Radio frequency Spectrum is a limited global natural resource with a high economic value, due to its heavy demand in the telecommunication sector. It is a finite but non-consumable natural resource. But it will be wasted if not used efficiently. In India, the radio frequencies are being used for around forty different types of services like space communication, mobile communication, broadcasting, radio navigation, mobile satellite service, aeronautical satellite services, defence communication etc.

1.2 Some of the important and typical characteristics of the radio frequency Spectrum are as below:

- (i) Radio frequency spectrum does not respect international geographical boundaries as it is spread over a large terrestrial area.
- (ii) Use of radio frequency spectrum is susceptible to overlapping interference and requires the application of complex engineering tools to ensure interference free operation of various wireless networks.
- (iii) Unlike other natural resources, radio frequency spectrum is not consumed upon its usage. It is also liable to be wasted if it is not used optimally and efficiently. Radio frequency spectrum usage is, therefore, to be shared amongst the various radio services and must be used efficiently, optimally and economically in conformity with the provisions of national and international laws.

1.3 The limitation of the radio frequency Spectrum is mainly due to the following factors:

- (i) Propagation characteristics of different types of radio waves.
- (ii) Availability of technology and equipment for different types of radio frequency spectrum applications.
- (iii) The suitability of frequency bands for specific applications.

1.4 Spectrum allocation is important and necessary to ensure interference free operation for each radio service. All nations share the electromagnetic Spectrum and reserve their right to its unlimited use. However, with a view to facilitating international telecommunication cooperation to support trade, transportation, communications and mutual protection against interference, all the countries have agreed to an International Telecommunication Convention. Thus, Spectrum frequencies for the use of various countries are allocated by the International Telecommunication Union (ITU) at the 'World Radio Communication Conferences' which are held every three/four years. The last conference was held in 2007. Allocations are made on a regional basis and for different types of services. It is mandatory for all the countries to adhere to these allocations. India comes in the region number three.

1.5 For the purpose of Spectrum allocation each member country submits its proposal to the ITU, based on their requirements and priorities for opening of the bands. During the conferences, all the proposals are discussed and decisions are accordingly taken for opening of the bands for new services or extension of the existing bands. These decisions are reflected in the International Frequency Allocation Table of the radio regulation and other regulatory provisions for use of the bands which forms the basis for allotment by the member countries.

1.6 Each frequency band is shared amongst various radio services but the sharing is possible only with the use of similar systems. Sharing is also possible by way of geographical separation, time-sharing through technical solutions like smart antenna and intelligent radio system. In India, the radio frequencies are confined between 9 KHz and 400 GHz.

1.7 The Wireless Planning and Coordination (WPC) Wing in the Ministry of Communications and Information Technology (Department of Telecommunication) created in 1952 is responsible for Spectrum Management, Wireless licencing and frequency assignments. WPC is divided into major sections like Licensing and Regulation (LR), New Technology Group (NTG) and the standing Advisory Committee on Radio Frequency Allocation (SACFA). SACFA makes the recommendations on major frequency allocation issues, formulation of the frequency allocation plan and making recommendations on various issues related to the ITU to sort out the problems referred to the Advisory Committee by various wireless users.

1.8 The National Frequency Allocation Plan (NFAP)–1981 forms the basis for identification of the frequency bands to be allocated for various major users, Spectrum utilization and development and manufacturing of wireless equipment in the country. The NFAP was earlier officially considered as a classified document. But the New Telecom Policy 1999 decided that it should be made a public document and the Spectrum allocation should be made in a transparent manner. On 1st January, 2000 the DoT made the NFAP a public document after due consultations with all the stakeholders. The NFAP is reviewed periodically by the DoT and currently the NFAP, 2008 is in vogue. The Plan contains the service options in various frequency bands for India and also provides the channeling plan in different bands. Frequency bands allocated for certain types of radio services in India are as under:

	Frequency Band		Services
(i)	9 KHZ - 525 KHZ	-	Martine, Aeronautical Navigation, Medium Wave Broadcasting
(ii)	525-1625 kHz	-	Marine and Aeronautical Navigation, short wave broadcasting, Amateur (Hour) radio and Cordless Phones.
(iii)	1.6-30 MHz	-	Fixed, Mobile, Maritime, Broadcasting
(iv)	30 -87.5 MHz	-	Fixed Mobile , Broadcasting, Aeronautical Navigation
(v)	87.5 - 108 MHz	-	FM radio
(vi)	109 - 173 MHz	-	Aeronautical Mobile (R), Radio Navigation and Outdoor Broadcast vans.
(vii)	174 - 230 MHz	-	Television Broadcasting
(viii)	230 - 450 MHz	-	Radio Astronomy, Fixed Mobile Aeronautical, Radio Navigation, Radio Pegging

(ix)	450 - 585 MHz	-	Broadcasting,
(x)	585 - 698 MHz	-	Fixed Mobile ,
(xi)	698 - 806 MHz	-	Fixed Mobile ,
(xii)	806 - 960 MHz	-	GSM & CDMA mobile services (2G), Trucking
(xiii)	960 - 1710 MHz	-	Mobile satellite, Fixed Mobile Radio Location, Radio Navigating Satellite, Aeronautical Mobile.
(xiv)	1710 - 1930 MHz	-	GSM Services (2G), Fixed Mobile
(xv)	1930 - 2010 MHz	-	Fixed Mobile
(xvi)	2010 - 2025 MHz	-	Fixed Mobile
(xvii)	2025 - 2110 MHz	-	Satellite and Space Operation, Fixed Mobile
(xviii)	2110 - 2170 MHz	-	3 G, Fixed Mobile
(xix)	2170 - 2300 MHz	-	Fixed Mobile
(xx)	2300 - 2400 MHz	-	BWA, Fixed, Mobile
(xxi)	2483.5 - 2500 MHz	-	Fixed, Mobile
	2500 -2690 MHz	-	MSS. BWA, BSS
(xv)	3300 - 3600 MHz	-	ISP, Satellite
(xvi)	3600 - 10000 MHz	-	Space research radio navigation, Satellite Communication
(xvii)	10000 - 14000 MHz	-	Satellite Communication and DTH services
(xviii)	14000 -23000 MHz	-	Fixed, Mobile Satellite
(xix)	23000 -24000 MHz	-	Radio Location
(xx)	24000 – 27000 MHz	-	Aeronautical, Radio Navigation
(xxi)	2690 -3200 MHz	-	Radio Location
(xxii)	3400 - 7125 MHz	-	Satellite Communication
(xxiii)	7125 – 10000 MHz	-	Fixed Microwave links, X- Band Radar

1.9 In India the Cellular Mobile Service Providers (CMSPS) use two types of technologies viz. Global System for Mobile Communication (GSM) and Code Division Multiple Access (CDMA). The allocation of Spectrum to the CMSPs depend on the type of technology they use.

1.10 GSM is a digital mobile telephony system which uses a variation of Time Division Multiple Access (TDMA) and is widely used world over. It operates in the 900 MHz or 1800 MHz frequency band. CDMA technology allows many users to occupy the same time and frequency allocations in a given band/space. As its very name implies, CDMA assigns unique codes to each communication to differentiate it from others in the same Spectrum bands. It operates in the 800 MHz and 1900 MHz bands. Presently 25 MHz Spectrum in 900 MHz band (890-915/935-960 MHz) and 75 MHz in the 1800 MHz band (1710-1785/1805-1880 MHz) are earmarked for the GSM

services. Spectrum for the rollout of 3G services (voice, data & video were allotted through e-auction in the 2.1GHz (1920-1980/2110-2170 MHz) band. The details of 2G & 3G Spectrum bands are elucidated at **Annexure-I**.

1.11 All the above bands were historically allotted to the defence for their mobile and point to point communication needs in India. Therefore, their cooperation was also required to make the bands available for commercial use. To facilitate the same, the Government of India have been allocating funds from time to time to provide Optical Fiber Cable (OFC) for use by the defence and consequent vacation of Spectrum for commercial purposes.

1.12 Before the mobile telephony came into existence in India, there was hardly any commercial value of Spectrum, rather it was practically none. That is why in the 1980s, it was allocated to various Departments without any charge. The demand for Spectrum was felt in 1994 when in accordance with the National Telecom Policy, 1994 (**Annexure-II**), the Telecom service sector was for the first time opened up for Private sector participation to complement the efforts of the Department to raise additional resources through increased international generation and adopting innovative means like leasing, deferred payments etc. The Licensing of Cellular Mobile Services in accordance with the objectives enunciated in NTP-1994 was initially done in two phases.

1.13 In the first phase, two Cellular Mobile Telephone Service (CMTS) licences were awarded in November, 1994 in each of the four Metro Cities of Delhi, Mumbai, Kolkata and Chennai on a Beauty Parade basis which meant that the Spectrum prices to be fixed in such a manner so as to ensure its optimum utilization by awarding it to the user(s) who scored the highest against a group of present criteria such as rural coverage or the fulfillment of the roll out obligations. Licence fee for the above two licences was predetermined. Spectrum Charges and Royalty for use of Spectrum were payable separately.

1.14 In the second phase, the two CMTS licences were awarded in December, 1995 in 18 Telecom Circles/Licence Service Areas based on a competitive bidding process.

Bids were for licence free spread over 10 years licence period. It did not include Spectrum charges for which a separate wireless operating licence was to be obtained and Spectrum Charges were payable separately at applicable rates. In addition, right of the Government was reserved to operate the cellular mobile services as the third operator.

1.15 So far as award of Basic Service Licences was concerned, tenders were invited in January 1995 through bidding process and licence fee was payable over a period of 10 years. The Basic service licences with five companies were signed with effective date as September, 1997 and with one company as effective date from March, 1998.

1.16 The Industry became sick under the above cited fixed licence regime to be paid upfront every year regardless whether any revenues were made or not. In other words, the service providers made high bids and huge investments in the hope of large growth of business which did not materialize. The commitments for high licence fee could not be honored because of inadequate revenue generation. It necessitated a relook and review of the existing Telecom Policy.

1.17 Accordingly, a High Level 'Group on Telecom' was constituted by the Government to make recommendations on (i) the proposed New Telecom Policy, (ii) Issues relating to existing licences of Basic and Cellular services and suggest appropriate remedial measures within the framework of the New Telecom Policy and (iii) Issues relating to the Telecom Regulatory Authority of India (TRAI).

1.18 The recommendations of the Group on Telecom (GoT) on changes in the Telecom policy and to resolve the problems of the existing operators were considered by the Union Cabinet who approved the New Telecom Policy-1999. The NTP-1999 (**Annexure-III**) became effective from 1st April, 1999. The main objectives and thrust areas of the NTP-99 were as under:

- 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.

- Strive to provide a balance between the provision of universal service to all uncovered areas, including the rural areas, and the provision of high-level services capable of meeting the needs of the country's economy.
- Encourage development of telecommunication facilities in remote, hilly and tribal areas of the country.
- 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.
- Convert PCO's, wherever justified, into Public Teleinfo centres having multimedia capability like ISDN services, remote database access, government and community information systems etc.
- 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.
- Strengthen research and development efforts in the country and provide an impetus to build world-class manufacturing capabilities.
- Achieve efficiency and transparency in spectrum management.
- Protect defence and security interests of the country.
- Enable Indian Telecom Companies to become truly global players.

1.19 In line with the above objectives, the specific targets that the NTP 1999 sought to achieve would be to:

- Make available telephone on demand by the year 2002 and sustain it thereafter so as to achieve a teledensity of 7 by the year 2005 and 15 by the year 2010.
- 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.
- Increase rural teledensity from the current level of 0.4 to 4 by the year 2010 and provide reliable transmission media in all rural areas.
- Achieve telecom coverage of all villages in the country and provide reliable media to all exchanges by the year 2002.
- Provide Internet access to all district head quarters by the year 2000.
- Provide high speed data and multimedia capability using technologies including ISDN to all towns with a population greater than 2 lakh by the year 2002.

1.20 NTP-99 thus stipulated the availability of affordable and effective communications for the citizens and open up the telecom sector to a greater competitive environment in both urban and rural areas providing equal opportunities and level playing field for all the players. Resolving the problems of the existing licencees was also envisaged under the NTP-99.

1.21 The New Policy framework categorized the following eight services in the Telecom Sector:

- (i) Cellular Mobile Service Providers, (CMSPs), Fixed Service Providers (FSPs) and Cable Service Providers collectively referred to as the 'Access Service Providers'.
- (ii) Radio Paging Service Providers
- (iii) Public Mobile Radio Trunking Service Providers
- (iv) National Long Distance Operators (NLDOs)
- (v) International Long Distance operators (INLDOs)
- (vi) Other Service Providers
- (vii) Global Mobile Personal Communication by Satellite (GMPCs) Service Providers
- (viii) V-SAT based Service Providers.

1.22 So far as the CMSPS are concerned, NTP-99 made the following provisions:

- (i) CMSPs shall be permitted to provide mobile telephony services including permission to carry its own long distance traffic within their service area without seeking an additional licence.
- (ii) Direct interconnectivity between licenced CMSP's and any other type of service provider (including another CMSP) in their area of operation including sharing of infrastructure with any other type of service provider shall be permitted.
- (iii) Interconnectivity between service providers in different service areas shall be reviewed in consultation with Telecom Regulatory Authority of India (TRAI) and the same would be announced by August 15, 1999 as a part of the structure for opening up national long distance.
- (iv) The CMSP shall be allowed to directly interconnect with the VSNL after opening of national long distance from January 1, 2000.
- (v) The CMSP shall be free to provide, in its service area of operation, all types of mobile services including voice and non-voice messages, data services and PCOs utilizing any type of network equipment, including circuit and/or packet switches, that meet the relevant International Telecommunication Union (ITU)/Telecommunication Engineering Center (TEC) standards.
- (vi) The CMSP would be granted separate licence, for each service area. Licences would be awarded for an initial period of twenty years and would be extendable by additional periods of ten years thereafter. For this purpose, service areas would be categorized into the four metro circles and Telecom circles as per the existing policy. CMSP would be eligible to obtain licences for any number of service areas.

- (vii) Availability of adequate frequency spectrum being essential not only for providing optimal bandwidth to every operator but also for entry of additional operators, based on the immediately available frequency spectrum band, apart from the two private operators already licenced, DoT/MTNL would be licenced to be the third operator in each service area in case they want to enter, in a time bound manner. In order to ensure level playing field between different service providers in similar situations, licence fee would be payable by DoT also. However, as DoT is the national service provider having immense rural and social obligations, the Government will reimburse full licence fee to the DoT.
- (viii) Spectrum utilization can be reviewed from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, completion and other interest of public.
- (ix) The entry of more operators in a service area shall be based on the recommendations of the TRAI who will review this as required and no later than every two years.
- (x) The CMSPs would be required to pay a one time entry fee. The basis for determining the entry fee and the basis for selection of additional operators would be recommended by the TRAI.
- (xi) Apart from the one time entry fee, CMSP operators would also be required to pay licence fee based on a revenue share.
- (xii) Appropriate level of entry fee and percentage of revenue share arrangement for different service areas would be recommended by TRAI in a time-bound manner, keeping in view the objectives of the New Telecom Policy.

1.23 The NTP-99 stipulated that the Government would invariably seek TRAI's recommendations on the number and timing of new licences before taking decision on issue of new licences in future. Thus NTP – 99 made it clear that before taking any decision on the issue of new licences, the Government shall seek the recommendations of TRAI on the number and timing of the new licences. Similarly, the entry of more operators in a circle/service area is required to be based on the recommendations of TRAI which was to review this requirement every two years.

1.24 The NTP – 99, with a view to providing relief to the Access Service Providers who were facing financial troubles, brought in the revenue sharing regime which contemplated payment of one time entry free and licence fee based on revenue share.

1.25 Accordingly, on 22nd July, 1999 the Government offered a major package to the existing licensees allowing migration from the existing fixed licence fee regime under NTP – 94 to a revenue sharing regime under NTP-99 alongwith a number of other concessions. This bailout package substantially altered the contractual obligations of the licensees towards payment of licence fee to the Government. Under the migration package, existing licencees had to forego their duopoly rights and additional operators were inducted in multipoly regime. All the existing BSOs and CMSPs migrated to the Revenue Sharing regime w.e.f. 1st August, 1999 according to which a share of 15 per cent of the Adjusted Gross Revenue (AGR) was chargeable as licence fee from the CMSPs and the BSOs. Subsequently, the share was modified to the slabs of 12 percent, 10 percent and 8 percent of the AGR depending on the size of the Circle/Service Area. This revenue share was payable quarterly. Apart from the licence fees, the Operators were also required to pay one time non-refundable entry fee before signing the new licence agreement.

1.26 Thus, in accordance with the provisions of NTP-99 three types of fees were prescribed viz (i) A fixed percentage of AGR as annual licence fee, (ii) A fixed percentage of AGR of CMSPS as annual Spectrum charge and (iii) One time entry fee before signing the licence agreement.

1.27 Two Government PSUs viz. Mahanagar Telephone Nigam Ltd. (MTNL) and Bharat Sanchar Nigam Ltd. (BSNL) were awarded CMTS licences in 1999-2000 as the third mobile operator. In September/October 2001, 17 new CMTS licences were issued, based on the TRAI's recommendations and the approval of the Government, one each in four Metro cities and 13 Telecom Circles. These licences were awarded based on bidding for the upfront fee. The allotment of Spectrum was assured under the Licence and no separate upfront fee was charged for Spectrum.

1.28 On 25th January, 2001 the guidelines for issue of licence for Basic Service under NTP – 99 was announced based on the recommendations of TRAI wherein the licensing of Basic Telephone service was opened on continuance basis on receipt of application and subject to fulfillment of eligibility conditions. Based on these guidelines, 25 additional Basic Telephone Service Licences were issued.

1.29 In September, 2003, a Group of Ministers on Telecom matters was constituted under the Chairmanship of the Finance Minister vide the Cabinet Secretariat Memo dated 10th September, 2003. The Terms of the References (TORs) of the GoM included the issue to “Chart the course to a Universal Licence”. The GoM on 31st October 2003 approved the 27th October, 2003 recommendations of TRAI on Unified Access Service Licence (UASL) regime. The Cabinet considered the recommendations of the GoM on 31st October, 2003 and *inter-alia* approved the following:

“.....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 authorized 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 authorized to finalize the details of implementation with the approval of the Minister of Communications & 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.

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”.

1.30 Based on the above Cabinet decision, an addendum to NTP-99 (**Annexure-IV**) was notified on 11th November, 2003. Guidelines for Unified Access (Basic & Cellular) Services Licence (**Annexure-V**) were issued on the same date. 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 Service Licence”. The USAL regime envisaged the provision of wire line, fixed and limited mobile wireless, full mobile wireless and cellular mobile telephone services under one licence on payment of the prescribed entry fees.

1.31 On 17th November, 2003, DoT decided to accept and process the UASL applications similar to the manner adopted for Basis Service Licence. On 24th November, 2003, the Minister of Communications and Information Technology reportedly approved the approach of granting UAS licences on First-Come-First Served basis as the announced guidelines 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. Thus, signing of UASL did not guarantee allotment of Spectrum. Service providers intending to provide wireless services were required to apply to the WPC Wing for allocation of Spectrum after obtaining UAS licence.

1.32 Meanwhile after enhancement of FDI in the Telecom Sector from 49 percent to 74 percent, the DoT issued revised Guidelines for UAS licences (**Annexure-VI**) on 14th December 2005. These Guidelines *inter-alia* stipulated that:

- Licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a Service Area.
- The applicant will be required to pay one time non-refundable entry fee, annual licence fee @ 18/8/6 % of the AGR for category A/B/C circles/Service Areas respectively and Spectrum charges on revenue share basis as specified by the WPC Wing.

1.33 The above Guidelines issued on 14th December, 2005 remain the extant Guidelines for grant of new UAS licences. Prior experience in the Telecom Sector was no more a prerequisite for grant of telecom service licence.

1.34 As per the condition of UAS license, initial Spectrum of 4.4 MHz+ 4.4 MHz was to be allotted for GSM based systems and a maximum of 2.5 MHz+ 2.5 MHz Spectrum to be allotted for CDMA based systems, on case by case basis and subject to availability. Incremental Spectrum beyond the initial allotment was linked to the subscriber base achieved by an operator.

1.35 The details of allocation of contractual and additional Spectrum are as under:

Allocation of contractual and additional spectrum		
Detail of licences	Allocation of contractual spectrum	Allocation of additional spectrum
CMTS licences for	A cumulative maximum of up to 4.4	As per DoT's order dated

first and second operators (1994-1995)	MHz+4.4 MHz in the 900 MHz band based on appropriate justification.	22 nd September, 2001 bandwidth up to 6.2 MHz+6.2MHz instead of 4.4 MHz+4.4 MHz subject to availability and justification effective from 1.8.99.
CMTS licences for third Operators (1997-98)	A cumulative maximum of up to 4.4 MHz+4.4 MHz in the 900 MHz band based on appropriate justification.	
CMTS licences for fourth operators (2001)	A cumulative maximum of up to 4.4 MHz+4.4 MHz in the 1800 MHz band. Based usage, justification and availability, additional spectrum up to 1.8 MHz+1.8 MHz making a total of 6.2 MHz+6.2 MHz.	As per DoT's order dated 1.2.2002, 1.8 MHz+1.8MHz spectrum beyond 6.2 MHz (total 8 MHz+8MHz) would be assigned to an operator on reaching a subscriber base of 5 lakh or more in a service area. Further, allocation of spectrum up to 10 MHz+10MHz on reaching prescribed subscriber base could also be considered subject to availability.
CMTS licences for fourth operators (2001)	Initially a cumulative maximum of up to 4.4 MHz+4.4 MHz in TDMA/GSM based systems or a maximum of 2.5 MHz+2.5MHz in CDMA based systems, on case by case basis subject to availability. The licensee operating wireless services will continue to provide such services in already allocated/contracted spectrum.	In 2006, criteria for allotment of additional spectrum in GSM beyond initial spectrum (4.4 MHz) was revised which was based on the minimum subscriber base ranging from 2 lakh subscribers for 6.2 MHz to 26 lakh subscribers for maximum of 15 MHz 2G spectrum depending upon the category (A/B/C) of the circle or service area.
New UAS Licences granted during November, 2003 to March, 2007	Initially a cumulative maximum of up to 4.4 MHz+4.4 MHz in TDMA/GSM based systems or a maximum of 2.5 MHz+2.5 MHz in CDMA based systems, on case basis subject to availability. Additional spectrum allowed based on optimal utilization but not more than 5+5 MHz in respect of CDMA or 6.2 MHz+6.2 MHz in respect of TDMA/GSM	In January 2008, criteria for allotment of additional spectrum in GSM band beyond initial spectrum (4.4 MHz) was again revised needing a minimum subscriber base ranging from 15 lakh subscribers for 6.2 MHz to 116 lakh subscribers for maximum of 14.2 MHz 2G spectrum depending upon the category (A/B/C) of the circle or service area.
UAS licences using dual technology (2008)	Initially a cumulative maximum of up to 4.4 MHz+4.4 MHz in TDMA/GSM based systems and a maximum of 2.5 MHz+2.5 MHz in CDMA based systems, on case by case basis subject to availability. Additional spectrum allowed based on optimal utilization but not more than 5+5 MHz in respect of CDMA or 6.2+6.2MHz in respect of TDMA/GSM.	

1.36 As per the existing policy, radio frequency Spectrum allotted to wireless service providers are charged based on usage. There is no upfront charges payable at the

time of allotment of Spectrum. Though there is one time non-refundable entry fee for obtaining UASL, operators intending to provide wireless services are eligible for 4.4 MHz of GSM or 2.5 MHz of CDMA Spectrum, depending upon the technology they choose for roll out. Incremental allotment of Spectrum is subject to achieving a definite subscriber base, as shown in the Table above, and also without any initial charges. For additional allotments, there is an increase in the Spectrum usage charges. Which is as under:

Spectrum allotted	Annual spectrum charge
Upto 2x4.4 MHz	2% of AGR of wireless services
Upto 2x6.2 MHz/2x5 MHz	3% of AGR of wireless services
Upto 2x8 MHz	4% of AGR of wireless services
Upto 2x10 MHz	4% of AGR of wireless services
Upto 2x12.5 MHz	5% of AGR of wireless services
Upto 2x15 MHz	6% of AGR of wireless services

1.37 The methodology for Entry fee and Spectrum Charges in various policy Regimes is as under:

METHODOLOGY FOR ENTRY AND FEE STRUCTURE IN VARIOUS POLICY REGIMES

Policy stage	Methodology for entry of operators	Fixed fee regime
NTP 1994	<ul style="list-style-type: none"> ▪ In first phase (Nov-94), two CMTS licences were awarded in four Metro cities on beauty parade* basis. ▪ In second phase (Dec-95), two CMTS licences were awarded in 18 telecom circles through a process of competitive bidding. ▪ Six companies were awarded Basic service licences through bidding process. 	License fee was pre-determined and bids were called on selected parameters.
NTP 1999	<ul style="list-style-type: none"> ▪ All existing BSOs and CMSPs were required to migrate to the new regime. ▪ Number and timing of new licences was to be based on TRAI's recommendations. ▪ BSNL and MTNL became the third CMTS operator in 2000. 	<ul style="list-style-type: none"> - One-time entry fee before signing the licence agreement. - A fixed percentage of adjusted Gross Revenue (AGR) as annual licence fee. - A fixed percentage of adjusted Gross

	<ul style="list-style-type: none"> Seventeen new CMTS licences as fourth cellular mobile operators in 2001 through a multi-stage bidding process. Twenty Five new Basic service licences in 2001 based on eligibility as per the guidelines issued on January, 2001. 	Revenue (AGR) of mobile services as annual spectrum charge.
UAS 2003	<ul style="list-style-type: none"> All the existing BSOs and CMPS were given option to migrate to UASL regime; by BSOs paying the difference of entry fee paid by them that as paid by the fourth CMTS operator in 2001 and CMTS operator at nil entry fee. 51 new UAS licences were awarded between 2004 to March, 2006 at the entry fee determined in 2001. 122 new UAS licences awarded in 2008, also at the same entry fee of 2001. 	<ul style="list-style-type: none"> One-time entry fee before signing the licence agreement. A fixed percentage of Adjusted Gross Revenue(AGR) as annual licence fee. A fixed percentage of Adjusted Gross Revenue(AGR) of mobile services as annual spectrum charge.
Introduction of dual technology	<ul style="list-style-type: none"> Approvals were issued in 2007-08 for dual technology (for using both CDMA and GSM) in 35 service areas at the entry fee equivalent to the migration fee fixed in 2001. 	<ul style="list-style-type: none"> One-time entry fee equivalent to migration fee for UAS based on 2001 entry fee of CMSPs was charged for allowing DT in 2007. Revenue sharing as for UAS 2003.

1.38 So far as licence fee was concerned, a share of 15 percent of the AGR was chargeable from private CMSPs and BSOs w.e.f. 1st August, 1999. Subsequently, the revenue share was modified to slabs of 12 percent, 10 percent and 8 per cent of the AGR depending on the size of the Circle. This revenue share was payable quarterly. The licence fee structure has further been revised as under:-

Service Area	Licence Fee (Percentage of AGR)
Metros	10%
`A' (AP, Gujrat, Karnataka, Maharastra, Tamilnadu)	10%
`B'(WB, Haryana, Kerala, MP, Punjab, Rajasthan, UP)	8%
`C' (Assam, Bihar, HP, J&K, NE, Orissa)	6%

1.39 Since 2004, the Department have been issuing new Unified Access Service Licences and allotting 2G Spectrum on continuous and first-come-first served basis. Between 2004 and 2007 51 new UAS licences were issued after the introduction of the UAS licensing regime on 11th November, 2003. Details of these licences are at **(Annexure-VII)**.

1.40 On 13th April, 2007, DoT made a reference to TRAI stating that the policy on UASL was finalized in November, 2003 based on the recommendations of TRAI and 159 licences had been issued so far for providing Access Services (CMTS/UAS/Basic) in the country with 5-8 Access Service Providers in each service area. These service providers were mostly providing wireless services using GSM/CDMA technology. There was, therefore, substantial demand on spectrum as any Indian company fulfilling the eligibility criteria could apply for UAS licence.

1.41 TRAI, in its 2007 recommendations, suggested 'No Cap' on the number of players and also recommended no auction of spectrum in the 800, 900 and 1800 MHz bands. The Authority also recommended grant of spectrum under combination of technology. The TRAI in its May, 2010 recommendations advocated that all UAS licences were eligible for 6.2 MHz of 2G spectrum.

1.42 In October, 2007, 35 Dual Technology Licences were issued to Reliance Communications, Shyam Telelink Ltd and HFCL Infotel Ltd. who were otherwise offering CDMA services. These companies paid the entry fee as per the TRAI recommendations. In the context of the Crossover or Dual Technology, TRAI recommended that a licensee using one technology may be permitted on request usage of alternative technology and thus allocation of dual spectrum i.e. both for CDMA & GSM services. However, such a licensee must pay the same amount of fee which has been paid by the existing licensees using the alternative technology or which would be paid by a new licensee going to use that technology. In accordance with the above recommendation of TRAI, in principle approval was communicated to the above cited companies to use alternate wireless technology.

1.43 TRAI's recommendation of 'No Cap' on the number of players and the removal of the pre-requisite of experience in the telecom sector by the UASL guidelines led to the receipt of a flood applications in DoT for grant of UAS licences. On 24th September, 2007, a Press Release was issued to the effect that new applications for UAS licences would not be accepted by the DoT after 1st October, 2007 till further orders. The Press Release appeared in the Newspapers on 25th September, 2007. There were 232 applications pending till 25th September, 2007 and 343 more applications were received between 25th September, 2007 and 1st October, 2007. Thus, 575 applications for UAS licences were received as of the cut off date. In a series of allegedly controversial actions/decisions, 122 UAS licences were issued on 10th January, 2008. The total number of licences issued by DoT since 1994 is at **Annexure-VIII.**

1.44 The grant of 122 UAS licences on 10th January, 2008 out of the 575 applications received, stirred a hornet's nest. The grant of these licences alongwith the 35 Dual Technology licences in October, 2007 and the allotment of additional spectrum to the CMSPs raised many eyebrows and ruffled many feathers. There were allegations from many quarters on the irregularities committed in the issue of UAS licences and allotment of 2G spectrum in 2007-2008 in an arbitrary manner by advancing the cut-off date to 25th September, 2007, manipulating the FCFS policy, cherry picking the TRAI recommendations side tracking the Ministry of Finance, ignoring the Law Minister's advice etc. What irked most is the grant of licences in 2007-2008 at a price determined in 2001 ostensibly to favour certain companies.

1.45. There were Lok Sabha debates on 4th and 5th December, 2007 on the issue of allocation of additional 2G spectrum to the GSM operators, free of cost. Similarly, there was a debate in Rajya Sabha on 16th December, 2008 on the alleged irregularities committed in the allocation of 2G spectrum. There were several starred and unstarred questions in both Lok Sabha and Rajya Sabha on the 2G spectrum issue. A number of Members of Parliament and presidents of political parties wrote to the Prime Minister on allocation of additional Spectrum, licences for Dual Technology, irregularities committed in the allocation of 2G spectrum in 2007-08 and related issues.

1.46 There were extensive press articles also commenting upon the gross irregularities in the issue of UAS licences/allotment of 2G spectrum in 2007-08. Several journals wrote in detail the chain of events that led to the massive loss to the exchequer on account of granting licences/spectrum in 2007-2008 at a price determined in 2001. The most prominent and probing reporting on the matter was made by Shri J. Gopikrishnan who wrote extensively since December, 2008 on the alleged 2G spectrum scam.

1.47 On the basis of nationwide concerns expressed towards irregularities of grave nature in the allocation of 2G spectrum under UASL and specific complaints received by the Central Vigilance Commission (CVC) against the First Come First Served Policy (FCFS) adopted for grant of UAS licences, a number of questionnaires were sent to the DoT by the CVC for clarifications on the FCFS policy. As the replies received from the DoT were not specific, the Commission decided to conduct a direct inquiry on the matter on 17th June, 2009. On 12th October, 2009 the CVC referred the matter to the Central Bureau of Investigation (CBI) for detailed investigation on the basis of the Commission's Direct Inquiry Report which highlighted serious irregularities in the grant of UAS licences/spectrum in 2008. The CVC's reference of the case to the CBI alongwith the Commission's Direct Inquiry Report are at **(Annexure-IX)**. The CBI, accordingly, filed the First Information Report (FIR) **(Annexure-X)** on 21st October, 2009.

1.48 Against the above backdrop, the Public Accounts Committee (2009-10) under the Chairmanship of Shri Gopinath Munde, M.P. at their sitting held on 19th January, 2010 *inter-alia* deliberated on the developments in the telecom sector, especially the allocation of Spectrum and related issues. Some Members proposed that the subject might be taken up by the PAC for detailed examination and report. After some discussions on various issues underlying the selection of the subject, the Committee desired that the Secretariat, in consultation with the Office of C&AG of India, might examine the feasibility of taking up the subject for examination and apprise the Chairman accordingly. After the needful was done and the Chairman was apprised, the subject 'Recent Developments in the Telecom Sector including Allocation of 2G

and 3G Spectrum' was selected for examination vide Lok Sabha Bulletin Part-II dated 12th February, 2010. However, due to paucity of time and finalization of Reports on other subjects, the Committee could not examine the allocation of 2G & 3G Spectrum and other related developments in the Telecom Sector.

1.49. On 9th April, 2010 auction of Spectrum in the 3G band was commenced and by 19th April, 2010 the process was over. It fetched a whopping Rs. 67,718.95 crore to the Government an amount much more than the estimate and anticipation of the DoT itself.

1.50 The Public Accounts Committee (2010-11) was constituted on 5th May, 2010 under the Chairmanship of Dr. Murli Manohar Joshi, M.P. In the first sitting of the Committee held on 21st May, 2010, some Members suggested that the subject "Recent Developments in the Telecom Sector including Allocation of 2G and 3G Spectrum" which was selected by the predecessor Committee might be reselected for examination. After due deliberations, the Committee decided to take up the subject for examination during the year 2010-11. Accordingly, the matter was notified in Lok Sabha Bulletin Part-II dated 11th June, 2010.

1.51 In the meanwhile, auction of BWA Spectrum started on 24th May, 2010 and completed on 11th June, 2010. It fetched the Government Rs. 38,543.31 crore. Thus, the Government received revenue to the tune of RS. 1,06,262.26 crore from the auction of 3G and BWA Spectrum which was five times more than the reserve price.

1.52 On 30th June, 2010, the Committee held a sitting on the subject wherein Shri P.J. Thomas, Secretary, DoT and other officers of the Department briefed the Committee on various aspects of the developments in the Telecom Sector including the allocation of 2G & 3G Spectrum. On the same day, the Committee heard the views of Shri Ashok Chawla, Secretary, Ministry of Finance (Department of Economic Affairs) and other officers of that Ministry regarding the role and responsibility of the Finance Ministry in Spectrum pricing. The Committee obtained post evidence clarifications/information from both the Departments on some of the important points that were raised in their respective depositions.

1.53 On 16th July, 2010, the Committee took evidence of Shri Nripendra Misra, the former Chairman, TRAI to know about the events that occurred during his tenure so far as TRAI's recommendations on Spectrum and related issues were concerned as well as the stance taken by him. On the same day, the Committee also took evidence of Shri J.S. Sarma, Chairman TRAI and other officers of the Regulatory Body wherein various recommendations of TRAI on licensing spectrum issues, the mandate given to TRAI in the formulation and application of various policies/guidelines for the expansion of Telecom Sector etc. were broached upon. Post evidence written replies on various points were obtained from the TRAI.

1.54 In the meantime, Shri Brijendra K. Syngal, former CMD, VSNL and a renowned expert in the Telecom Sector wrote to the Chairman, PAC highlighting serious irregularities in the allocation of 2G Spectrum in 2007-2008. Shri Syngal was accordingly called to appear before the Committee and he tendered evidence on 9th August, 2010 and apprised the Committee in detail of the various events that led to the massive irregularities in the allocation of 2G Spectrum. As some points still remained to be clarified, Shri Syngal again tendered evidence before the Committee on 27th August, 2010. Post evidence written replies and other documents/information on the subject were also obtained from him.

1.55 On 16th November, 2010, the C&AG's Performance Audit Report on the 'Issue of Licences and Allocation of 2G Spectrum' was laid in the Parliament. It provided some additional and vital inputs to the Committee in a thorough examination of the subject. The gist of the major findings of the Audit Report is as follows:-

(a) Gaps in Policy Implementation

In consonance with the objectives enunciated in the New Telecom Policy, 1999, a policy framework was established in November, 2003 to chart the course of implementation of a Universal Licensing Regime. It envisaged two phases viz. first phase of six months assigned for migration of the already existing Basic Service Operators (BSOs) and Cellular Mobile Service Operators (CMSOs) to the new Regime, and the second phase which was to start after the first phase envisaged a nominal entry fee for the licence and separate charges for Spectrum. While the first

phase was implemented, the second one was overlooked leading to the valuation of 2G Spectrum in 2008 at 2001 prices. Thus, one of the most important objectives of the new policy decision to delink Spectrum from issuance of licence and devise an efficient allocation formula and appropriate price for Spectrum remained unachieved.

(b) Side tracking of the Ministry of Finance and Overruling their views and concerns

The Department of Telecommunications (DoT) did not associate the Ministry of Finance in the discussion for efficient allocation of Spectrum and its price fixation although the Finance Ministry was authorized by the Cabinet decision of 2003 to participate in such discussions. Similarly, the advice of the Finance Ministry in November, 2007 to review the matter of price fixation of Spectrum on 2001 basis was overlooked by the DoT. Not only that, the role of the GoM was confined to issues concerning vacation of Spectrum, leaving out the two other Terms of References viz. efficient allocation and appropriate pricing of Spectrum, in contravention with the policy decision of 2003.

(c) Overlooking the Advice of the Ministry of Law and Justice

The opinion of the Ministry of Law and Justice, at the level of the Minister, to refer the entire issue of Spectrum allocation to an Empowered Group of Ministers (EGoM) and in the process obtain the legal opinion of the Attorney General was ignored by DoT, although the said opinion was expressed in response to the request of the Department itself in October, 2007.

(d) Non-adherence to the Prime Minister's Suggestions

The Prime Minister's advice in November, 2007 to reconsider the price discovered in 2001 for a fair and transparent method of Spectrum allocation with an eye on revenue generation was not heeded to on the plea of providing a level playing field to the new applicants.

(e) Not Consulting the Telecom Commission

The High Powered Telecom Commission which also includes part time members from the Ministries of Finance, Industry etc. and Planning Commission was not apprised of the TRAI Recommendations of August, 2007 nor were they consulted at the time of grant of 122 UAS licences in 2008.

(f) Arbitrary Changes in the cut-off date

Circumventing the recommendations of TRAI on 'no cap' on the number of licences in any service area, the DoT's Press Release of September, 2007 stated that applications for issue of licences would be accepted only upto 1st October, 2007, which in effect put an artificial cap on the number of licences to be awarded. Not only that, the cut off date of 1st October, 2007 was arbitrarily advanced to 25th September, 2007.

(g) Not following the First Come First Served (FCFS) Policy in letter and spirit

The First Come First Served (FCFS) Policy an internally and earlier adopted Policy in the Department of Telecom which was extended for issue of new UAS licences was not followed in letter and spirit as would be corroborated from the fact that applications submitted between March, 2006 and 25th September, 2007 were issued Letters of Intents (LoI) on a single day viz. 10th January, 2008.

(h) Issue of Licence to ineligible Applicants

Eighty five out of the 122 licenses issued in 2008 were found to be issued to Companies which did not satisfy the basic eligibility conditions set by the DoT and had suppressed facts, disclosed incomplete information and submitted fictitious documents for getting UAS licenses and thereby access to Spectrum.

(i) Presumptive and Potential loss to the Exchequer by not Auctioning 2G Spectrum

On the values determined through various indicators like the prices offered by S. Tel Limited, the revenue generated through 3G Spectrum auction and companies

selling their equity after award of licence, the presumptive value of 2G Spectrum on account of allocation of Spectrum beyond the contracted amount of 6.2 MHz and grant of 157 licences (122 UAS plus 35 Dual Technology licences) in different circles during 2007-08 would be in the range of Rs. 57,666 crore to Rs. 1,76,645 crore.

1.56 On 22nd November, 2010, the Committee held an internal discussion wherein the Chairman *inter-alia* apprised the Members of the work done by the Committee prior to the laying of the Audit Report on the subject and now that the Audit Report had come out with several findings, these would serve additional valuable inputs for the Committee to facilitate the examination of the subject.

1.57 On 7th December, 2010, the Committee took evidence of Shri Pradip Baijal, former Chairman, TRAI and Shri Siddharth Behuria, former Secretary, DoT to take stock of the situation and the events that happened during the tenure at their respective offices so far as licensing, allocation of spectrum etc. were concerned.

1.58 On 20th December, 2010, a Press communiqué inviting memoranda on the subject from individuals/organizations/Associations was sent to the DAVP for publication. On 23rd December, 2010 the said Press Communiqué appeared in various National and Regional Newspapers. In response to that, 40 odd memoranda were received through mail/e-mail. Some of the memoranda contained relevant suggestions which were appropriately utilized while taking evidence and obtaining information/documents from various Ministries/Departments.

1.59 On 27th December, 2010, the Committee interacted with the C&AG who enlightened them on various findings on the issue of licences and allocation of 2G spectrum as contained in the Audit Report. He even furnished written reply to the queries raised by some Members.

1.60 On 21st January, 2011, the Committee took evidence of the Secretary, DoT to have several clarifications on the subject matter. Post-evidence replies on many issues were also obtained from the Department. On the same day, Shri D.S. Mathur, former Secretary, DoT and Ms. Manju Madhavan, former Member(Finance), Telecom

Commission deposed before the Committee clarifying the stance taken by them in their respective capacities on the methodology adopted for issue of UAS licences/allocation of 2G spectrum and other related issues.

1.61 On 3rd February, 2011, the Committee took evidence of Dr. D. Subbarao, Governor, Reserve Bank of India and former Finance Secretary to get to know the stance taken by the Ministry of Finance, during his tenure, on the Cabinet decision of 2003 on the Spectrum pricing issue, his correspondence with the Secretary, DoT etc.

1.62 On 15th February, 2011, the Committee took evidence of the Director, CBI to obtain crucial information on the investigation of the 2G Spectrum scam, the delay on the part of the agency in investigating the case, direct monitoring of the CBI investigation by the Supreme Court etc. The Committee also obtained post evidence replies on several issues from the CBI.

1.63 On 8th March, 2011, Shri J. Gopikrishna, Special Correspondent, of a Newspaper deposed before the Committee and established the veracity of his extensive writings starting from 12 December, 2008 on the alleged 2G Spectrum scam. The Committee also obtained other related information from him.

1.64 On 14th March, 2011, the Committee took evidence of Shri Manu Joseph, Editor, the 'Open' magazine and Shri Vinod Mehta, Editor-in-Chief, the 'Outlook' magazine to ascertain the authenticity of the Niira Radia Tapes which were extensively published in their respective magazines. The Committee also obtained other valuable information from them on the Radia Tapes.

1.65 On 4th April, 2011, the Committee took evidence of Ms. Niira Radia, Chairperson, Vaishnavi Communications Corporation Pvt. Ltd. to ascertain the veracity of her conversation with various politicians/Journalists/Corporate Houses on allocation of portfolios in the Union Government, allotment of 2G Spectrum, transfer of officials in the DoT, alleged payment of bribe etc.

1.66 On the same day, the Committee also took evidence of Shri Ratan N. Tata, Chairman, Tata Sons Ltd. to verify the authenticity of his conversation with Niira Radia and issues relating to allocation of Dual Technology licences, Tata's commercial advance to Unitech etc.

1.67 On 5th April, 2011, the Committee took evidence of Swan Telecom Pvt. Ltd. (now DB Etisalat), Reliance Communications Ltd., S. Tel Ltd. and Unitech Wireless Ltd. to obtain clarifications on various findings of Audit, their representation against the Audit findings, DoT's clarifications and several other related issues.

1.68 On 15th April, 2011, the Committee took evidence of the Law Secretary, the Director, CBI and the Attorney General of India to get clarifications on various issues like the stance taken by the Ministry of Law & Justice in the allocation of UAS licence/2G Spectrum in 2007-08, the Attorney General's legal opinion on related matters and the latest position of the CBI's investigation.

1.69 On 16th April, 2011 the Cabinet Secretary and the Principal Secretary to the Prime Minister deposed before the Committee to clarify their respective role and responsibilities of the Cabinet Secretariat and the Prime Minister's Office in the formation of the GoM, ensuring compliance to the Terms of References (ToRs) of the GoMs, dealing with various letter/representations of the Members of Parliament and other related matters.

1.70 The chronological sequence of evidences taken by the Committee before and after laying of the Audit Report is as under:-

S.No.	Date	Witnesses examined
1.	30.06.2010	Secretary, Ministry of Communications and Information Technology (Department of Telecommunications) and other officers.
2.	30.06.2010	Secretary, Ministry of Finance (Department of Economic Affairs) and other officers.
3.	16.07.2010	Shri Nripendra Misra, ex-Chairperson, TRAI
4.	16.07.2010	The Chairman and other representatives of Telecom Regulatory Authority of India.

5.	09.08.2010	Shri Brijendra K. Syngal
6.	27.08.2010	Shri Brijendra K. Syngal
7.	22.11.2010	Internal discussion
8.	07.12.2010	(i) Shri Pradeep Bajjal, Former Chairperson, Telecom Regulatory Authority of India. (ii) Shri Siddharth Behura, former Secretary, Ministry of Communications and Information Technology (Department of Telecommunications).
9.	27.12.2010	Interaction with the C&AG
10.	21.01.2011	(i) Secretary, Ministry of Communications and Information Technology (Department of Telecommunications). (ii) Shri D.S. Mathur, Former Secretary, DoT and Ms. Manju Madhvan, Former Member, Telecom Commission.
11.	03.02.2011	Dr. D. Subbarao, Governor, Reserve Bank of India and Former Finance Secretary.
12.	15.02.2011	Shri Amar Pratap Singh, Director, CBI
13.	08.03.2011	Shri Gopikrishnan, Special Correspondent, The Pioneer.
14.	14.03.2011	(i) Shri Manu Joseph, Editor, Open Magazine (ii) Shri Vinod Mehta, Editor-in-Chief, Outlook
15.	04.04.2011	(i) Niira Radia, Chairperson, Vaishnavi Communication Corporation Ltd. (ii) Shri Ratan N. Tata, Chairman, Tata Sons Ltd.
16.	05.05.2011	(i) Representatives of DB Etisalat (ii) Representatives of Reliance Communication Ltd. (iii) Representatives of S. Tel Ltd. (iv) Representatives of Unitech Wireless Ltd.
17.	15.04.2011	(i) The Secretary (Ministry of Law & Justice), Department of Legal Affairs. (ii) The Director, CBI (iii) The Attorney General of India
18.	16.04.2011	(i) The Cabinet Secretary (ii) The Principal Secretary to the Prime Minister

1.71 The Committee also procured several supplementary/additional information/documents running into thousands of pages from the PMO, the Cabinet Secretariat, DoT, DEA, TRAI, CBI etc. Based on the evidences taken and documents obtained from various Ministries/Department/

Agencies/Organisations/Experts/Individuals, the Committee examined the subject in great detail which are elucidated and broached upon in the following Chapters.

CHAPTER - II

SHORTCOMINGS IN THE IMPLEMENTATION ASPECT

2.1 As mentioned earlier, in October 2003 TRAI submitted its recommendations on Unified Licensing regime which envisaged total elimination of service based licensing. Unified Licence was an approach towards convergence of access media. Full implementation of the new regime was to be completed in two phases. The Union Cabinet approved the TRAI report in October 2003. Phase I was the first step of migration of existing licensees to the Unified Access Licensing Regime. This was to be followed by a second phase of a fully Unified Licensing /Authorisation Regime having all telecom services under one licence. This was for grant of licences to new operators. The TRAI, in its report on Unified Licensing accepted by Government in October 2003, had recommended that Unified Licence Regime should aim at automatic licensing/authorisation for telecom services subject to notification to Regulatory Authority and compliance with published guidelines by operator thereby removing all barriers for growth in the sector. The underlying principle was to allow licence at nominal entry fee and price the spectrum separately, it being a scarce public resource. TRAI had further observed that "Spectrum was to be distributed by such a mechanism that it is allocated optimally to the most efficient user".

2.2 Unified Licensing/Authorization being the main objective, TRAI had recommended a two-phase implementation. Recognizing that primary objective of growth in teledensity depended on securing access network at low cost, in the first phase, unification of access services at the Circle level was recommended whereby the service providers of new Unified Access Licensing Regime would be able to offer basic and/or cellular services using any technology (GSM or CDMA). The second phase was to be soon followed by defining the guidelines and rules for fully Unified Licence/Authorization Regime.

2.3 Thus, the implementation of the UASL regime based on the recommendation of TRAI and approved by the Council of Ministers was to be carried out in two phases with the first phase of six months assigned for the implementation of UASL regime for migration of already existing Basic Service Operators (BSOs) and Cellular Mobile

Service Operators (CMSOs) to the new regime. The entry fee for migration of BSOs was determined as the fee equal to what was paid by the fourth cellular operator introduced through multi-stage bidding process in 2001. CMSOs were not required to pay any entry fee for migrating as they had already entered the market through a bidding process and thus paid a market determined price. The second phase was to start after the first phase in which a Unified Licencing regime, with a nominal entry fee for the licence with the spectrum being charged separately, was envisaged.

2.4 However, Audit examination of the subject revealed that the Department of Telecommunications did not implement the licensing regime as approved by the Cabinet and implemented only the first phase of the policy, overlooking the second phase. In the actual implementation, the interim stage of implementation seemed to have become the final destination. This appeared to have become the underlying factor, quite erroneously, to value the spectrum in 2008 at 2001 prices. An important objective of this policy decision to delink the prices of spectrum from the issue of licence and devise an efficient allocation formula for spectrum along with an appropriate price, remained unachieved.

2.5 Audit further pointed out that as a consequence of such lacunae in the implementation of the policy laid down by the Council of Ministers in 2003, the issuance of licences in 2008 along with allocation of Spectrum had been done by DoT at prices determined in 2001 which were based on a totally nascent market despite the sector witnessing substantial transformation and manifold growth. The issue was never placed before Cabinet for a review.

2.6 In the above context, the Committee desired to know from the DoT the reasons for not delinking the price of Spectrum from Licence and devising an efficient formula for allocation of Spectrum and its appropriate pricing as envisaged to be implemented in the phase second of the UASL regime. In reply the Department reproduced Para 7.2 of the TRAI's recommendation dated 27.10.2003 on 'Unified Licensing Regime' as under:

"The Guidelines would be notified by the licensor based on TRAI recommendations to include nominal entry fee, USO, etc. The charges for

spectrum shall be determined separately. The operator shall be required to approach the licensor mainly for spectrum allocation. Since, spectrum is a scarce resource, it needs to be regulated separately. Spectrum should be distributed using such a mechanism that it is allocated optimally to the most efficient user".

2.7 The DoT further submitted that subsequent to its recommendation dated 27.10.2003 on 'Unified Licensing Regime', TRAI submitted the following recommendations in the matter, in the year 2005:

- (a) Recommendations dated 13.01.2005 on 'Unified Licensing Regime'.
- (b) Recommendations dated 13.05.2005 on 'Spectrum Related Issues'.

2.8 On the issue of spectrum pricing and allocation procedure, the TRAI in its recommendations dated 13.01.2005 on 'Unified Licensing Regime', recommended as below:

"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**".

2.9 Subsequently, TRAI in its recommendations dated 13.05.2005 on 'Spectrum Related Issues' gave following recommendations on the issue of efficient utilization of spectrum, spectrum pricing and spectrum allocation procedure:

- (i) As in the existing framework the spectrum charges should continue to have two components: one time spectrum charge and annual spectrum charge. (Para 4.1)
- (ii) 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. (Para 4.3.3)
- (iii) Existing method of annual spectrum charge in terms of percentage of revenue share should continue (Para 4.5.1).

- (iv) Keeping in view the objectives of growth, affordability, penetration of mobile services in semi-urban and rural areas and also the aspect of spectrum charges, Authority further recommends that existing ceiling on annual spectrum charges of 6% AGR should be brought down to 4% of AGR. (Para 4.5.2)
- (v) The presently used subscriber base dependent spectrum allocation procedure is useful in situations where there is constraint in the availability of spectrum. (Para 2.2.6)

2.10 Subsequently, TRAI in Para 2.55 of its recommendation dated 28.08.2007 on 'Review of license terms and conditions and capping of number of access providers', relating to delinking of spectrum from licence, stated as below:

"2.55 Today the spectrum allocation follows grant of UAS License. On payment of certain entry fee, the applicant is given the license and subject to availability, he is given a certain amount of spectrum in the 2G band. **In case the applicant does not require this spectrum for providing the access service, he may want to use only wire-line or may want to provide services using some other spectrum, e.g. BWA, there is no clear cut path for him. He is required to pay the full license entry fee.** The Authority in the past has also recommended that the license fee should be separate from the spectrum fee. With the advent of new technologies where spectrum other than 2G band will be used, resolution of this issue is becoming critical. **As recommended earlier, the Authority again reiterates that spectrum should be de-linked from the licensing regime.** There is also a need to clearly specify the license fee charges without spectrum. The Authority is of the view that license fee charges should be on a reduced scale to facilitate penetration of telecom services. **Bifurcating present entry fee in to license fee and spectrum charge is difficult.** It is also a fact that entry fee determined in 2001 does not bear any relationship to present spurt in the telecom market. Keeping in mind that spectrum is a scarce resource, **the Authority recommends that the DoT should examine the issue early and specify appropriate license fee for UAS licensees who do not wish to utilize the spectrum**".

2.11 On the above recommendation of TRAI, Government decided as below (as conveyed to TRAI vide DoT letter dated 8.11.2007):

"As per the NPT'99, it was envisaged that there shall be the following categories of licences for telecommunication services:

- (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.

2.12 Proposing a new category of licence i.e. “UAS Licensee who do not wish to utilize the spectrum” would be out of preview of NTP’ 99. This recommendation is not accepted”.

2.13 The DoT stated that against this background, delinking of pricing of spectrum from issuance of licences had not taken place so far. The Department also mentioned that TRAI in its recommendations dated 11.05.2010 on ‘Spectrum Management and Licensing Framework’ had recommended that all future licences should be unified licences and that spectrum be delinked from the licence. TRAI had further, on 18.05.2010, requested the Government to await its recommendations on spectrum pricing and refarming, which were still awaited.

2.14 Asked to state categorically whether the matter of the non-achievement of the second phase of the USAL, as approved by the Council of Ministers in October, 2003, was placed before the Cabinet, at any point of time for a review, the DoT replied that the matter was not placed before the Cabinet for a review.

2.15 The Committee then desired to know whether TRAI had given their further recommendations on Spectrum pricing and refarming which were awaited by the Government. In reply, the DoT stated that on 8th February, 2011 TRAI had made further recommendations on Spectrum pricing. After examining the above recommendations of TRAI, the Committee of DoT had submitted its report on 22nd February, 2011. Subsequently, the Minister of Communications & IT had interacted with the telecom service providers on 8th March, 2011 on the above recommendation of TRAI and final decision on the matter would be taken in due course of time.

CHAPTER - III

OVERRULING THE VIEWS AND CONCERNS OF THE MINISTRY OF FINANCE

3.1 With the approval of the Prime Minister, a Group of Ministers (GoM) on Telecom Matters was constituted under Finance Minister's chairmanship vide Cabinet Secretariat's memo dated 10th September 2003. The Members of the GoM were the Minister of Defence, the Minister of Law & Justice, Commerce & Industry, Communications & Information Technology & Disinvestment, Minister of External Affairs, and Minister of State (Independent Charge) of the Ministry of Information & Broadcasting.

3.2 The Terms of References (ToRs) of the GoM were as follows:

- (i) To recommend how to ensure release of adequate Spectrum needed for the growth of the telecom sector.
- (ii) To recommend measure for adequate resources for the realization of the NTP targets of rural telephony.
- (iii) To resolve issues relating to the enactment of the Convergence Bill.
- (iv) To chart the course to a Universal Licence.
- (v) 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.
- (vi) To apprise FDI limits in the telecom sector and give recommendations thereon.
- (vii) To identify issues relating to mergers and acquisitions in the telecom sector and recommend the way forward; and
- (viii) To consider issues relating to imposition of trade tax on telecom services by the State Governments.

3.3 The GoM held five meetings viz. on 25th and 28th September 2003 and 4th, 12th and 30th October, 2003. In their fifth and final meeting held on 30th October, the GoM had *inter-alia* recommended that **'The Department of Telecommunications and the 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.** Thus, Spectrum pricing issue was to be decided in consultation within the Ministry of Finance.

3.4 But Audit scrutiny revealed that when a GoM was constituted was constituted in February 2006, its Terms of Reference (ToR) were modified at the instance of the DoT to keep the issue of Spectrum pricing outside its purview. Though MoF insisted for its inclusion in the ToR for the GoM, DoT maintained that 'Spectrum pricing was within the normal work carried out by them'. The MoF opined that Spectrum pricing was an issue which has far reaching consequences for the economy and needed to be debated, but this was not considered at the highest level and the views of the DoT prevailed in finalisation of ToR. The GoM's role, in December 2006, at the instance of the DoT, was confined to issues concerning 'Spectrum vacation'. Thus, without MoF getting a chance to contribute to the issue of pricing of Spectrum, new licences continued to be issued along with the Spectrum. It was also noted that the DoT kept the applications for UAS licence pending since March 2006 on the grounds of non-availability of Spectrum, though a decision to get the Spectrum vacated from MoD was taken way back in 2003. DoT admitted that prior to April 2007, availability of Spectrum was not quantified and GSM Spectrum allotments to service providers/operators were made after due co-ordination with MoD on a case to case basis. Since the availability of Spectrum had not been quantified till April 2007, the basis for keeping the applications pending and seeking TRAI recommendation (April 2007) on limiting the number of Access Service Providers on the grounds of non-availability of Spectrum is inexplicable.

3.5 Audit further pointed out that the Ministry of Finance while agreeing with the Audit view stated that the Ministry has at various points of time been advocating for a more rational mechanism for allocation and pricing of 2G Spectrum. Right from August 2003 they have been recommending greater orientation in Spectrum allocation, keeping efficiency and optimal utilization considerations in mind, through auction to

users, who are willing to pay the maximum fee. MoF concurred with Audit that the assumption of the DoT to the effect that Spectrum pricing was within its normal work allocation was not tenable. The MoF observed that “in view of the directions of the Union Cabinet (October 2003) and particularly in the absence of requisite clarity in the recommendations of TRAI and decision of the Union Cabinet, in regard to the fixation of entry fees for new licensees, prudent principles of governance would have required DoT to engage in further inter-ministerial discussions particularly with the MoF. The fact that this was not done despite repeated advices from MoF does give scope for creation of doubt, on the validity of the decision taken to fix the entry fee for new licenses at 2001 levels”.

3.6 In the above context, the Committee asked DoT about the basis on which the Ministry of Finance was not associated in the discussion and finalization of the Spectrum pricing formula despite the recommendation of the GoM of 2003. In reply, the DoT stated that based on the direction of the Cabinet in 2003 that “DoT and Ministry of Finance would discuss and finalize Spectrum pricing formula, which would include incentive for efficient use of Spectrum as well as disincentive for sub-optimal usage”, it was considered appropriate to obtain the views of TRAI. Accordingly, on 17.11.2003, DoT made a reference to TRAI, requesting for their considered opinion on efficient utilization of Spectrum, Spectrum pricing and Spectrum allocation procedure. In response, vide letter dated 19.11.2003, TRAI stated as below:

“(i) 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 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.

(ii) 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 licence agreement. This implies that even though unified access license 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 license may be provided and for those using CDMA technology, Spectrum allocation as per the provisions of basic service operators licence can be considered.

- (iii) Regarding entry fee to new Unified Access licensees, the matter has already been clarified *vide* Chairman TRAI's DO letter dated 14.11.2003".

3.7 TRAI gave recommendations on Spectrum issues including Spectrum pricing on 13th May, 2005. TRAI gave following recommendations on the issue of efficient utilization of Spectrum, Spectrum pricing and Spectrum allocation procedure:

- (i) "As in the existing framework the Spectrum charges should continue to have two components: one time Spectrum charge and annual Spectrum charge". (Para 4.1)
- (ii) "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". (Para 4.3.3)
- (iii) "Existing method of annual Spectrum charge in terms of percentage of revenue share should continue" (Para 4.5.1).
- (iv) "Keeping in view the objectives of growth, affordability, penetration of mobile services in semi-urban and rural areas and also the aspect of Spectrum charges, Authority further recommends that existing ceiling on annual Spectrum charges of 6% AGR should be brought down to 4% of AGR". (Para 4.5.2)
- (v) "The presently used subscriber base dependent Spectrum allocation procedure is useful in situations where there is constraint in the availability of Spectrum". (Para 2.2.6)
- (vi) "The present criteria of allocation of additional Spectrum is different for GSM and CDMA operators. The TRAI, therefore, recommends that the subscriber based Spectrum allocation criteria for both GSM and CDMA should be revised. The revised criteria should also keep in mind the expected results from intensive efforts to get more Spectrum released and the resulting availability picture of Spectrum. Further, these criteria should be made to gradually move in the direction wherein they become technology neutral. If the Government so desires, TRAI jointly with TEC can assist WPC to formulate a revised criteria". (Para 2.3.3)

3.8 Accordingly, with the support of TEC, additional Spectrum allocation criteria for GSM and CDMA access Spectrum was revised during March' 2006.

3.9 Separately, on the issue of Terms of Reference (TOR) of the Group of Ministers (GOM) on 'vacation of Spectrum and razing resources for the purpose' there were following correspondence between and DoT and Ministry of Finance.

S.No.	Date	Item
1.	07.12.2006	Cabinet Secretariat issued TOR for the GoM on vacation of Spectrum etc. (Annexure-XI)
2.	28.03.2007	Finance Secretary wrote to Secretary (DoT) for inclusion of 'Spectrum pricing' in the TOR of the GoM (Annexure-XII) .
3.	02.04.2007	Secretary (DoT) wrote to Finance Secretary clarifying DoT's stand and informing about the letter of Hon'ble MOC&IT to Hon'ble Prime Minister (Annexure-XIII) .
4.	19.04.2007	Finance Secretary wrote to Cabinet Secretary for inclusion of 'Spectrum pricing' in the TOR of the GoM.
5.	06.06.2007	Finance Secretary wrote to Secretary (DoT) for reconsideration of inclusion of the issue of 'Spectrum pricing' in the TOR of the GoM. (Annexure-XIV)
6.	15.06.2007	DoT informed the Ministry of Finance that the issue of Spectrum pricing and charges for the use of Spectrum is a dynamic issue. It depends, inter-alia, on the region, type of telecom services, band of Spectrum used. It is to be considered from time to time in consultation with TRAI. (Annexure-XV)

3.10 The DoT also stated that in its letter dated 22nd November, 2007 **(Annexure- XVI)**, the Finance Secretary, **inter-alia stated that it is not clear 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.** In response, Secretary (DoT) on 29.11.2007**(Annexure-XVII)**, inter-alia informed the Ministry of Finance that TRAI, in its recommendations dated 28th August, 2007, has not recommended any changes in entry fee/annual license fee and hence no changes were considered in the existing policy. Thereafter, there was no further communication received from the Ministry of Finance in the matter.

3.11 The Committee then asked whether the Department of Economic Affairs did not write to the DoT asking for confirmation if proper procedure had been followed for grant of Dual Technology licences to the CDMA operators at the entry fee fixed in 2001 and whether the DoT was not advised by the DEA to stay all further action to issue the licences. In reply, the DoT stated that the permissions for usage of dual technology Spectrum under the existing licences at the entry fee discovered in 2001 were granted based on the recommendation dated 28.08.2007 of TRAI, the report of the Committee of DoT which examined the recommendation of TRAI, approval of the Internal Telecom Commission and decision of the then Hon'ble MoC&IT. Vide letter dated 29.11.2007, DoT responded the letter dated 22.11.2007 of DEA. There was no further correspondence received from DEA with respect to the permissions granted for usage of dual technology Spectrum. Permissions for usages of dual technology Spectrum to private companies were issued by DoT on 10/30.01.2008.

3.12 The Department further stated that the issue of Spectrum pricing was independently discussed at length between MoF and DoT between January and July 2008. Meetings were held between the then Finance Minister and the then Minister of Telecommunications on January 30, 2008, May 29, 2008 and June 12, 2008; the then Finance Secretary and the then Secretary, DoT also met a number of times between February and June 2008.

3.13 The Committee then queried whether it was not a fact that pursuant to the recommendations made by the Committee constituted by DoT itself, on 'Allocation of Access (GSM/CDMA) Spectrum and Pricing', the DEA asked the DoT to place the report before the Telecom Commission expeditiously and ensure that no further allocation of Spectrum was made by the DoT, until a final view had been taken on the matter. In reply, the DoT stated that the Committee on 'Allocation of Access (GSM/CDMA) Spectrum and Pricing' submitted its report on 13.05.2009. On the same day, Secretary, DoT, vide D.O. dated 13.05.2009 to Finance Secretary forwarded a copy of the report with a request to finalize their views which may be put forward in the Telecom Commission meeting, dates for which would be intimated shortly.

- (i) In response, Finance Secretary, vide D.O. dated 04.08.2009 to Secretary (DoT), intimated that the recommendations of the report have been

studied in detail and requested to convene the meeting of the Telecom Commission at the earliest opportunity. It was also stated therein that in the meantime, it may be ensured that no further allocations of Spectrum are made by the DoT, until a final view had been taken on the recommendations of the report.

- (ii) The issues on which the Committee had given its recommendations were earlier deliberated in detail by TRAI also while giving its recommendations on "Review of license terms & conditions and capping of number of access providers" on 28th August 2007. View taken by DoT at that point was that the recommendations of the Committee have wider implications on Telecom Sector and to public at large. Moreover, all the recommendations are inter-linked or inter-dependent. Therefore, on 07.07.2009, recommendations of TRAI were sought on the recommendations/comments of the Report.
- (iii) Accordingly, Secretary (DoT), vide D.O. dated 11.09.2009, conveyed to Finance Secretary that the report has been referred to TRAI in accordance with the provisions of the TRAI Act, 1997, and, the report of the Committee would be discussed by the Telecom Commission after the receipt of the TRAI recommendations.
- (iv) Thereafter, DEA, vide letter dated 14.10.2009, sought clarification from DoT regarding the likely time frame by which TRAI recommendations are expected to be received and the details of the existing rules and procedures accordingly to which Spectrum allotment is being made, and the total quantum of Spectrum allotted since receipt of the report's recommendations.
- (v) Accordingly, the DoT, vide letter dated 13.11.2009, conveyed to DEA that TRAI vide letter dated 06.08.2009 and 21.08.2009 has intimated that TRAI will be able to finalize its recommendations by end of November, 2009. It was further conveyed that neither initial nor additional GSM Access Spectrum has been allotted after receipt of the Spectrum Review Committee report.
- (vi) On 11.05.2010, TRAI submitted its recommendations on "Spectrum Management and Licensing Framework". TRAI has further, on 18.05.2010, requested the Government to await its recommendations on Spectrum pricing and reframing.
- (vii) Vide D.O. dated 10.06.2010, Finance Secretary requested Secretary, DoT that the entire issue relating to allocation and pricing of 2G Spectrum (GSM/CDMA) may be placed before the Telecom Commission at the earliest opportunity so as to evolve a coordinated view in the matter.
- (viii) Pending receipt of further recommendations of TRAI (as mentioned in TRAI's letter dated 18.05.2010), DoT, on 14.07.2010, constituted a

Committee under the Chairmanship of Member (Technology), Telecom Commission to examine the recommendation dated 11.05.2010 of TRAI.

- (ix) On 8.2.2011, TRAI has made its further recommendations regarding Spectrum pricing. Considering the recommendations dated 11.05.2010 and 08.02.2011, the aforesaid Committee of DoT has submitted its report on 22.02.2011. Subsequently, the Hon'ble MoC&IT on 08.03.2011 has discussion with the Telecom Service Providers on the said recommendations of TRAI. The matter will now be placed before the Full Telecom Commission.

3.14 Asked to state specifically the level at which the decision was taken to change the terms of References of the GoM – 2006 to associate the Ministry of Finance in the discussion and finalization of Spectrum pricing, the DoT replied, that the revised Terms of References which include the 'Spectrum Pricing' was issued by the Cabinet Secretariat *vide* their letter dated 7th December, 2006 (**Annexure-XVIII**).

3.15 The Committee asked the Cabinet Secretariat to furnish the Original ToRs of the GoM of 2006 and stated the reasons for limiting the ToRs of the GoM to only vacations of Spectrum as against the Planning Commission's suggestions to consider a transition path for cellular mobile services, Spectrum pricings etc. In reply, the Cabinet Secretariat stated that the original ToRs of the GoM of 2006 as approved by the Prime Minister were as follows:

- (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 once 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.

3.16 The Cabinet Secretariat further stated that the Groups of Ministers (GoMs) are appointed by the Cabinet, the Standing Committees of the Cabinet, or the Prime Minister for investigating and reporting to the Cabinet on such matters as may be specified. When any of the aforesaid authorities take a decisions to constitute a GoM, the Cabinet Secretariat issues the requisite orders. In the present case, the Prime Minister's Office (PMO) *vide* ID dated February 15, 2006 communicated the decision of the Prime Minister to constitute a Group of Ministers (GoM) on 'Vacation of Spectrum and raising resources for the purpose'. The backdrop of the constitution of the GoM was the "...need for high level priority intervention to resolve various issues concerning vacation of Spectrum and upgrading the technology and equipment of existing udders like defence and funding such upgradation....." the composition of the GoM, as approved by the Prime Minister (PM), was as follows.

- (i) Shri Pranab Mukherjee, the then Raksha Mantri.
- (ii) Shri Shivraj V. Patil, the then Home Minister
- (iii) Shri P Chidambaram, the then Finance Minister
- (iv) Shri Priyaranjan Dasmunshi, the then Minister of Information and Broadcasting
- (v) Shri Dayanidhi Maran, the then Minister of Communications and Information Technology.
- (vi) Dr Montek Singh Ahluwalia, Deputy Chairman, Planning Commission.

3.17 The order constituting the GoM on the above lines was issued by the Cabinet Secretariat on February, 23, 3006.

3.18 DoT were asked on March 22, 2006 to apprise the Cabinet Secretariat of the present status of the GoM. the then Secretary, DoT, vide the letter dated April 03, 2006 informed the Cabinet Secretariat that the Minister of Communications and Information Technology (MoCIT) has written to the PM on February 28, 2006, referring to their earlier discussion on the subject and proposing certain modifications in the ToRs of the GoM. He stated that further directions in the matter were awaited. DoT was again requested to indicate the latest position in the matter on June 12, 2006 and July 17, 2006. Vide UO dated October 04, 2006, the Cabinet Secretariat brought to the notice of the PMO, the position communicated in the then Secretary, DoT's letter, and also informed PMO that no meeting of the GoM had been held till that date.

3.19 Vide PMO ID dated November 27, November, 2006, the Cabinet Secretariat was informed that the PM had approved the following revised ToRs in respect of this GoM:

- (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 users, keeping in mind the nature of technology upgradation;
- (iii) To estimate and identify the resources required by the concerned Ministries and their phasing, for putting in place necessary alternate systems by such users to enable migration;
- (iv) To suggest measures for early introduction of Spectrum efficiently digital terrestrial broadcasting for vacation of Spectrum for other services in line with international practices.

3.20 The Cabinet Secretariat further stated that the necessary modifications to the ToRs of the GoM were brought about by Cabinet Secretariat memorandum dated December 07, 2006. It was further stated that the suggestions made by the Planning Commission regarding ToRs of the GoM are not available with the Cabinet Secretariat.

3.22 Asked to state the level at which the decision was taken to modify the ToRs, the Cabinet Secretariat replies that the ToRs were amended on the basis of the PMO ID

dated 27th November, 2006 wherein it was stated that the PM had approved the revised ToRs which were brought out by the Cabinet Secretariat.

3.33 The Committee, then, asked the reasons for overlooking the mandatory pre-condition of the Transaction of Business Rules while deciding on Spectrum pricing and allocation particularly when the Finance Minister had specifically desired that these issues be included in the ToR of 2006. In reply, the Cabinet Secretariat stated that the Union Cabinet, in its meeting held on October 31, 2003, had, *inter-alia*, approved the following:

"2.1.2 (3) 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 dis-incentive for sub-optimal usages.....".

3.34 Article 77(3) of the Constitution of India provides that the President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business. The Government of India (Allocation of Business) Rules, 1961 and the Government of India (Transaction of Business) Rules, 1961 have both been made in exercise of the power conferred under the said Article. Further, under Rule 3 of the Transaction of Business (ToB) Rules, subject to the provisions in these rules regarding consultation with other Departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, disposal of all business allotted to a Department is to be done by, or under the general or special directions of, the Minister-in-charge. Thus, the responsibility of ensuring compliance with the directions of Cabinet or its Committees rests with the concerned Ministry/Department (in this case, the Department of Telecommunications (DoT)).

3.35 The then Finance Secretary had written to then Secretary, DoT, *vide* his letter dated March, 28, 2007 asking for technology neutrality in Spectrum allocation and Spectrum pricing to be included in the ToRs of the GoM. A copy of this letter was also forwarded to the Cabinet Secretariat. On being asked by the Cabinet Secretariat for comments on this issue, DoT forwarded a copy of the letter dated April 2, 2007, of then Secretary, DoT to the then Finance Secretary, wherein, it was *inter-alia* stated that Spectrum pricing is within the normal work carried out by DoT.

3.36 Meanwhile, Cabinet Secretariat received a letter from the then Finance Secretary reiterating that technology neutrality and Spectrum pricing should be included with the ToRs of the GoM. Finance Secretary had in his letter stated that the methodology for allocation of Spectrum and its pricing are issues that impinge on revenues as well as the ultimate price paid by the consumer; hence, these issues would have to be discussed in the GoM. MoF did not agree with the contention of DoT that these issues are within their normal work allocation, on the ground that these issues have economic and financial ramifications and need to be discussed in the GoM. Cabinet Secretariat advised both the Department of Economic Affairs (DEA) and DoT on May 17, 2007 to discuss and resolve the matter at the level of Secretaries and thereafter advise the Cabinet Secretariat about the decisions taken. Nothing further was heard from DEA on this issue thereafter. A chronological summary of the events is given below:

Issues relating to the ToRs of the GoM

Sl.No.	Date	Item
1.	February 23, 2006	Cabinet Secretariat issues a notification for constitution of GoM on vacation of Spectrum etc. (including the issue of 'Spectrum pricing')
2.	April 03, 2006	Letter of the then Secretary, DoT intimating that further directions in the matter are awaited pursuant to the letter dated February 28, 2006 of the then MoCIT to PM.
3.	December 07, 2006	Cabinet Secretariat issues revised ToRs, deleting the issue of 'Spectrum pricing'.
4.	March 28, 2007	Finance Secretary writes to Secretary (DoT) for inclusion of 'Spectrum pricing' in the ToRs of the GoM, with a copy to Cabinet Secretariat.
5.	April 02, 2007	Secretary (DoT) writes to Finance Secretary stating that Spectrum pricing is within the normal work carried out by his Ministry and ToRs have been amended following the then Minister's letter to the Prime Minister. A copy of the letter is endorsed to the Cabinet Secretariat.
6.	April 19, 2007	Finance Secretary writes to Cabinet Secretary for inclusion of 'Spectrum pricing' in the ToRs of the GoM.
7.	May 17, 2007	Cabinet Secretariat replies to Finance Secretary suggesting that Finance Secretary and Secretary (DoT)

		may discuss for resolving the issue and advise the Cabinet Secretariat about the decision taken in the matter. No further communication is received on this matter thereafter.
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3.37 The role and function of the Cabinet Secretariat was to notify the decisions taken at the level of the Prime Minister in regard to the aforesaid GoM. Since DEA had raised certain issues with regard to the notification of December 07, 2006 (Which was based on the communication received from the PMO), Cabinet Secretariat asked both the Ministers to resolve their differences, before taking further steps in the matter. This position was consistent with the decision of the Union Cabinet, dated October 31, 2003, which had *inter-alia* mandated that Spectrum pricing formula would be discussed and finalized between DoT and Ministry of Finance.

3.38 On being asked to state the reasons for not constituting a GoM for looking into the policy issues for processing a large number of applications for grant of the UAS licences, ignoring the suggestions of the Ministers of Law and Justice as well as Commerce and Industry, the Cabinet Secretariat replied that Groups of Ministers (GoMs) are appointed by the Cabinet, the Standing Committees of the Cabinet, or the Prime Minister for investigating and reporting to the Cabinet on such matters as may be specified. When any of the aforesaid authorities take a decision to constitute a GoM, Cabinet Secretariat issues the requisite orders.

3.39 No facts on record are available with the Cabinet Secretariat relating to any advice/orders to form a GoM on the issue referred to in the question.

3.40 The Committee desired to know specifically as to whether the Cabinet Secretariat made any efforts to enforce the Cabinet decision of 2003 and as per the original ToRs of 2006 to associate the Finance Ministry in the Spectrum pricing issue. In reply, the Cabinet Secretariat stated that the then Secretary, DoT, *vide* his letter dated April 03, 2006 informed the Cabinet Secretariat that the Minister of Communications and Information Technology (MoC&IT) has written to the PM on February 28, 2006, referring to their earlier discussion on the subject and proposing certain modification in the ToRs of the GoM. He stated that further direction in the matter were awaited.

3.41 *Vide* PMO ID dated November 27, 2006, Cabinet Secretariat was informed that the PM had approved a revised ToR in respect of this GoM. The necessary modifications to the ToRs of the GoM were brought about by Cabinet Secretariat memorandum dated December 07, 2006. This is in keeping with the fact that the Group of Ministers (GoMs) are appointed by the Cabinet, the Standing Committees of the Cabinet, or the Prime Minister for investigating and reporting to the Cabinet on such matters as may be specified; and, when any of the aforesaid authorities take a decision to constitute a GoM, the role of the Cabinet Secretariat is limited to issuing the requisite orders.

3.42 Thereafter, on receipt of the letter of the then Finance Secretary, dated April 19, 2007 asking for inclusion of 'Spectrum pricing' in the ToRs of the GoM, Cabinet Secretariat, vide its communication dated May 17, 2007, advised both the Department of Economic Affairs (DEA), Ministry of Finance (MoF) and DoT that the issue may be discussed and resolved at the level of Secretaries and thereafter the Cabinet Secretariat be advised about the decisions taken in the matter. This advice was consistent with the decision of the Union Cabinet, dated October 31, 2003, that Spectrum pricing issues may be discussed and finalized between DoT and MoF. Nothing further was heard from DEA on this issue thereafter.

3.43 The Committee then asked the Prime Minister's Office about the reasons for not constituting a GoM despite request from the Minister of Law and Justice and Minister of Commerce and Industry. In reply, the PMO stated that no request was received from the Minister of Law and Justice for setting up a Group of Minister. However, it may be mentioned that the then Minister of Communications & IT addressed a letter dated 2.11.2007 to the Prime Minister, apprising that the Department of Telecommunications had wanted to examine the possibility of any other procedure, in addition to the current procedure of allotment of licences, and that the Ministry of Law and Justice was requested by the Department of Telecommunications to examine the legal tenability of the alternatives. On this, the Law Minister suggested referring the matter to an Empowered Group of Ministers. The Minister of Communications & IT stated in his letter to the Prime Minister that this suggestion was totally out of context and that the Department has decided to continue with the First-Come-First-Served basis for processing of applications.

3.44 The then Minister of Commerce and Industry, Shri Kamal Nath addressed a letter dated 3.11.2007 to the Prime Minister, expressing "concern on the sudden and alarming developments in the telecom sector" and adding that "several prominent international strategy and financial investors have made serious commitments in the telecom sector in India and it is important that the policies that our Government follows continue to support the growth in telecom sector and remain fair to all players". He further stated that the balance is vital for the image of India across the globe. Against this background, he suggested that it may be advisable to have comprehensive look at the issues facing the telecom sector and that he would advise setting up of a Group of Ministers.

3.45 A letter dated 15.11.2007 was addressed by the then Minister of Communications & IT, Shri A. Raja, to the Prime Minister, referring to their discussion on 14.11.2007, wherein the Prime Minister had mentioned that Shri Kamal Nath had written a letter to the Prime Minister expressing concern on developments in the telecom sector and had also advised setting up a Group of Ministers to sort out the issues. In this letter, the Communications Minister stated that increasing competition will give further boost to investment in the telecom sector, bring down tariff and result in vital spread of telecom services in rural areas and also bring in new customers who still cannot afford these services. He added that this will also help in reducing cost of telecom-intensive industries and make them domestically and internally more competitive. He mentioned that the success of the telecom sector is evident from the fact that an average of seven million subscribers are being added per month and quarterly results of these companies have shown one of the best results ever, which is also reflected in the increasing share prices of these companies. As regards the suggestion of setting up of a Group of Ministers, the Minister mentioned that Groups of Ministers are generally set up for major policy decisions of a Department or on inter-Departmental issues; since the Department had decided to continue with the existing First-Come-First-served policy for processing of applications, the suggestion of Shri Kamal Nath for setting up of a Group of Ministers is out of context. The Minister concluded with the statement that he is equally concerned about the image of India across the globe and assured the Prime Minister that all decisions taken by him will be

guided by the larger interest of the public, competition and growth of the telecom sector.

3.46 The PMO further stated that the suggestion made by the Commerce Minister regarding setting up of a Group of Ministers was taken up with the Communications Minister, who responded to the suggestion. Further, no suggestion regarding setting up of a Group of Ministers was received in PMO from the Law Minister, although the Communications Minister himself apprised the Prime Minister of Law Minister's view in this regard, along with the Communications Minister's view thereon. Neither set of suggestions referred to Spectrum pricing. The Spectrum pricing formula was, in any case, to be finalized by the Department of Telecommunications and the Ministry of Finance, in terms of the Cabinet decision of 31.10.2003.

3.47 Asked to state the level at which the ToRs as submitted by the Planning Commission was modified, the PMO replies that the Terms of References suggested by both the Planning Commission and the Department of Telecommunications formed inputs for arriving at the terms of reference for the Group of Ministers. The decision regarding the terms of reference of the Group of Ministers on vacation of Spectrum was taken at the level of the Prime Minister after due consideration of the matter.

3.48 A perusal of the copies of the original file notings in this regard, as furnished by the PMO, revealed that the Director, PMO in his note dated 21.11.2006 **(Annexure-XIX)** had *inter-alia* stated as follows:

"It may be mentioned that while the earlier ToRs covered not only the estimation of requirement of funds and resources for enabling existing users to migrate from Spectrum bands to be vacated, but also the likely source of resources, while mentioning that, as far as possible, the aim should be that revenues fully offset the cost of vacation of Spectrum. The proposed ToRs now received cover only the estimation of requirement of resources and, if the ToR is limited to this, it appears likely that such estimation would ultimately be posed for being met through budgetary provision and not through revenues harnessed from Spectrum utilization".

3.49 Giving his comments on the above note, the Joint Secretary, PMO had *inter-alia* remarked as follows:

"However, it is anticipated that nay amendment in the ToRs as suggested by Minister, Communications & IT, would not be acceptable to him, and would lead

to further delay in the commencement of work by the GoM. It is in the interest of the development of the telecom sector, that the GoM commences its work at the earliest so that sufficient Spectrum is made available to major users".

3.50 The Principal Secretary, then, remarked that during discussion with the Secretary, DoT the suggestion to "estimate and identify the resources required by the concerned Ministries and their phasing, for putting in place necessary alternate systems by such users to enable migration", was indeed made, but apparently it is not acceptable to the Minister. Thus, the original ToRs were notified with the approval of the Prime Minister on 26th November, 2006.

3.51 The Committee then desired to know whether the PMO had made any efforts to enforce the Cabinet decision of 2003 according to which the Spectrum pricing formula was to be jointly disclosed and finalized between the DoT and the Ministry of Finance. In reply, the PMO stated that there was no record in the PMO which indicated that the Cabinet decision of 2003 was not being followed.

3.52 The PMO further stated that not giving effect to a Cabinet decision is tantamount to varying or reversing the same. Therefore, under the rules of business, it is incumbent upon the department concerned to bring such a matter before the Cabinet.

3.53 Thus, it may be seen that once the Cabinet decides the matter, the department concerned has to give effect to the same and, in the event of non-enforcement of such a Cabinet decision, it is bound to bring it again before the Cabinet. There is no specific requirement for PMO to enforce Cabinet decisions and nor is this the general practice.

3.54 In response to another specific query, the PMO replies that Minister of Communications & IT addressed to the Prime Minister stated specifically that Spectrum pricing was within the purview of the Department of Telecommunications. Shri Dayanidhi Maran, the then Minister of Communications & IT addressed three letters to the Prime Minister in 2006, on 11.1.2006, 28.2.2006 and 16.11.2006. These letters dealt with the terms of reference of a Group of Ministers set up for vacation of Spectrum. The letter of 11.1.2006 suggested draft terms of reference and the same

draft was received again with the letter of 28.2.2006, in which the Minister also conveyed his feeling that some of the terms of reference of the Group of Ministers as constituted impinge upon the work normally to be carried out by the Ministry itself, and requested for modification of the terms of reference. The letter dated 16.11.2006 also requested for changing the terms of reference as attached with the letter.

3.55 Thus, the Minister of Communications highlighted to the Prime Minister the need for the GoM to focus on vacation of Spectrum and the Prime Minister accepted this position. The terms of reference were accordingly revised to focus on the original goal behind setting up of the GoM, viz., vacation of Spectrum.

3.56 As mentioned earlier, the then Finance Secretary (Shri Ashok Jha) wrote a letter on 28th March, 2007(**Annexure-XX**) to the then Secretary, DoT (Shri D.S. Mathur) requesting inclusion of the Spectrum pricing issue in the ToRs of the GoM. Shri Mathur replied on 2nd April, 2007(**Annexure-XXI**) turning down the request. On 6th June, 2007 and again on 22nd November, 2007 the then Finance Secretary (Dr. D. Subbarao) (**Annexures-XXII & XXIII**) wrote to Shri Mathur on the same line to which Shri Mathur did not agree as conveyed by his letters dated 15th June, 2007 and 29th November, 2007 respectively (**Annexures-XXIV & XXV**).

3.57 In the above context, the Committee desired to know from Dr. Subbarao as to what happened after Shri Mathur's reply of 29th November, 2007. Dr. Subbarao submitted in evidence:

".....May be, there was no exchange of correspondence, but there were certainly discussions going on between the Secretary (Telecom) and myself on these matters".

Asked to furnish evidence of such discussions, Dr. Subbarao submitted:

"Sir, there may not be a paper trail, but there was certainly discussion going on. Sir, as you know- you have been a Minister yourself-in the Government, not everything is on paper or reduced to writing. Maybe there was some note file endorsements, but I cannot recall them because the note file is not here. but I recall that we were continuing to talk to the Telecom Ministry".

3.58 The Committee queried whether oral communications between two Secretaries of different Ministries on such important issues was professionally appropriate. The Governor, RBI submitted:

".....I do agree that leaving communication between two Ministries at the oral level is a bad professional practice. But it does happen all the time because of pressure of work and other things. we shall certainly try to improve that".

Asked to pinpoint what was exactly the pressure of work, Dr. Subbarao replied:

".....This was in the month of December and we were getting into budget and there were so many concerns at that time. It is not as if I was completely, fully engaged on this issue, but I do recall that we were talking to them even as there were other commitments on our time. I cannot really say that I had specifically asked them why they did not supply the information that I had called for".

3.59 Expressing their surprise the Committee asked whether it was prudent to ignore such great source of revenue, more so when the Ministry of Finance was engaged in the budget exercise. In reply, Dr. Subbarao submitted:

"Sir, to infer that we had ignored the issue or abandoned the issue, I think, would be incorrect and inappropriate. I agree that we had not reduced all that was taking place in oral communication into writing. That certainly was a lapse. But I do recall that discussions were taking place as much as time allowed. We were deeply conscious that this has revenue implications. In fact, it is the revenue implications which in the first instance triggered our effort to motivate revisiting the stance of Spectrum pricing.

Actually, the burden of my argument at this time is that had we known that some event was going to take place on the 10th of January, in November, we would have been certainly more active. But we did not know, Hon. Member had said it was coming out in the papers, etc. Indeed, it was. But it was not certainly clear to me or to our Ministry. Nobody told me that all this is actually going to lead to the culmination by issue of licences on a particular date. We thought that it was still open-ended and that there was room for discussion, and that we will not reach the point where we should conclude that discussions had broken down and we must take it to another higher forum".

3.60 The Committee then desired to know whether it was not the duty and responsibility of the Finance Ministry to ensure that the ToRs of the GoM, which entrusted them with the task of discussing and finalizing the Spectrum pricing issue, were adhered to. In reply, the then Finance Secretary, deposed:

"Sir, I submit that I was trying to fulfill that responsibility of carrying out the Terms of Reference. Yes, I admit that there was no written record of everything

that was happening. but efforts were being pursued. Certainly, we would have doubled our efforts, if we knew that there was a deadline approaching. We did not know at that point of time that licences would be issued and the terms of engagement would change".

3.61 Asked to state whether the matter was brought to the notice of the Cabinet Secretary or the Finance Minister, Dr. Subbarao deposed:

"I do not recall having said specifically that we should go back to the Cabinet that I cannot really say without seeing the file. But I should have briefed the Finance Minister about the on-going discussions".

3.62 In response to another specific query on the Shri D.S. Mathur's 15th June, 2007 letter Dr. Subbarao submitted:

".....I have seen this reply now of 15th June of Shri Mathur, but I do not recall having seen this.....it indeed the letter was received, I do not recall having briefed the Finance Minister..."..

3.63 The Committee then desired to know whether at any point of time, the Finance Ministry consulted TRAI or obtained the opinion of the Law Ministry. In response, Dr. Subbarao submitted:

".....I do not think we have done that. That would be, as your said, a systemic lapse".

3.64 The Committee asked whether that meant that due diligence was not applied. Dr. Subbarao said.

"In a way, yes, sir. I would have to admit that".

3.65 In response to specific query as to whether giving Spectrum in 2001 on the DoT's reasoning of increasing competition and teledensity was appropriate, Dr. Subbarao submitted:

".....If indeed competition and welfare maximization were the issues, then the purpose of welfare maximization was not served if you had actually allowed some licence holders to then sell equity".

Dr. Subbarao summed up:

"There is an argument to be made that if your forego revenue, you can gain on the welfare side like creating teledensity and providing telecom access to lower income people. Providing them opportunities would not only enhance growth but also made them more inclusive. But I think that has to be an explicitly objective and indeed, if that was the objective, we should have weighed the

costs and benefits of foregoing a certain amount of revenue against what would be the return by way of increasing teledensity. We had not done that at any point of time. We were always arguing on the basis of level playing field rather than on the basis of nay growth dimensions this might have subsidise that and if they have chosen to do that, then, as a civil servant, it would have been beyond my remit to contest that".

3.66 Referring to the June 15, 2007 letter of Shri D.S. Mathur, the former Secretary, DoT to Dr. D. Subbarao, the former Finance Secretary wherein Shri Mathur indicated that since Spectrum pricing and charges for the use of Spectrum was a dynamic issue, it was to be reviewed and considered from time to time in the context of the changing technology and international best practices, in consultation with TRAI, the Committee asked the Ministry of Finance to furnish details thereof. In reply, the DEA stated that the said letter did not appear to have been received and processed on the file of DEA, as per records.

3.67 The Committee then desired to know from the DEA as to how the file relating to the correspondence between Dr. Subbarao and Shri Mathur was closed after November, 2007. In reply, the DEA stated that after receiving the D.O. No. 20-165/2007-AS-1 dated November 29, 2007 from Shri D.S. Mathur the then Secretary, DoT, a self contained note had been prepared by Ms. Shyamala Shukla Director (Infrastructure) on December 17, 2007. The note has been marked to JS (O.T.) and AS (EA). There are, however, no notings thereafter and the file has not been processed further. A copy of the notings of Ms Shyamala Shukla is enclosed here with **(Annexure-XXVI)**.

3.68 In his note dated 15.1.2008 **(Annexure-XXVII)**, the then Finance Minister wrote to the Prime Minister:

"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 Finance Minister's same note to the Prime Minister reads further:

"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".

3.69 Further, the Committee note that the Prime Minister in his interaction with the Editors of the Electronic Media on 16.2.2011 (**Annexure-XXVIII**) said:

".... This was also discussed with the Finance Ministry because in terms of the Cabinet decision of 2003 the pricing and allocation of Spectrum was to be settled between the Ministry of Finance and the Telecom Department. Initially, of course, the Finance Ministry did ask for a high price of Spectrum but after many discussions, the two ministries agreed that as far as 2G is concerned, we have to live with the present system particularly with regard to the amount of Spectrum that is built and embedded into a license agreement. So this is the background why I did not proceed further with this matter of pricing of Spectrum, because if the Ministry of Finance and Ministry of Telecom both agree and they have the obligation of the Cabinet Decision of 2003 to decide on the matter and also since TRAI is an expert body and Telecom Commission has experts, if all of them are of the same view, I did not feel I was in a position to insist that auctions must be insisted".

On the question of Sale of Spectrum, the Prime Minister further clarified:

"..... I thought it was then the prevailing practice and Raja was continuing that policy, that as far as who gets licenses, the first come first serve policy, how it was implemented, that was never discussed with me. Licenses was not matter which got referred to me or to the Cabinet that was the decision exclusively of the telecom minister. Now subsequent events have shown that Companies sold their equity but I was told that they had not sold it to shareholders. They have sold it in a manner to dilute the equity of the promoters....".

3.70 In his speech in the Rajya Sabha on 24.2.2011, the Prime Minister clearly stated:

".... The Government's policy of the pricing of Spectrum was taken on the basis of a Cabinet decision of 2003 which specifically left the issue to be determined by the Ministry of Finance and the Ministry of Telecommunication. Contrary to the assertion of the Leader of the Opposition, the record clearly shows that the then Minister while he initially had a different view which he

communicated to me on January 15, 2008, subsequently consulted the Minister, Telecommunication and the two Ministers worked an agreed formula on Spectrum charges which was reported to me in a meeting on July 4, 2008. Furthermore, this decision that was put to me by the two Ministers was in line with the recommendation of TRAI in its Report of August 2007. In that Report the TRAI had clearly stated that only 3G Spectrum should be auctioned and the policy for 2G Spectrum should continue on the same basis as hitherto".

3.71 As regards the Cabinet decision of 2003 and the correspondences between Shri D.S. Mathur and Dr, Subbarao on the matter, the Committee asked Shri Mathur in evidence about the reasons for his strong defence of the actions of the DoT and his disagreement with the contention of the Finance Secretary as evident from his letters, in response Shri Mathur submitted:

" As regards correspondence with the Finance Secretary, I would like to clarify that whatever I wrote to the Finance Secretary was that time position of the Department but we were ourselves not happy with the situation and, therefore, we were making attempts to change the situation, to change the policy. But so long as the policy remained I had to communicate that policy to the Finance Department".

3.72 Asked to state categorically whether the letters written by him were voluntary or under any coercion Shri Mathur replied.

"If I am the Secretary of a Department and if I have a policy before me, so long as I am not able to get that policy changed in the Department I will have to defend that policy. I cannot say that this policy is wrong and therefore, the Finance Department should intervene".

Shri Mathur further stated:

".....I cannot say something to Finance Secretary which my Minister does not agree. Therefore, I did not say that we will change the policy. We had within the Department brought all the matters to the notice of the Hon'ble Minister and if the Minister agreed, had he agreed, then we would have communicated to the Finance Minister that we have changed the policy. But so far as the policy and the practice stands, we have to communicate to the Finance Department as matters stand".

3.73 On being asked to state as to whether he brought the matter to the notice of his Minister, Shri Mathur submitted:

"The Minister had been requested at least twice by us to reconsider the matter and bring the rates at which the licences were to be given up-to-date....."

3.74 Asked to state specifically whether he apprised the Minister that side tracking the Ministry of Finance would lead to the violation of the Cabinet decision of 2003, Shri Mathur responded:

"I may not have used those words but I did bring it to the notice of the Hon'ble Minister that we may have to go to the Cabinet for that".

3.75 When the Minister did not agree, the Committee asked, whether it was brought to the notice of the Cabinet Secretary or the Principal Secretary to the Prime Minister. In response, Shri Mathur replied:

"I submit to you that I brought it to the notice of the Cabinet Secretary and the notice of the Principal Secretary to the Prime Minister not once but several times".

Asked to state whether it was done in writing, Shri Mathur submitted:

"Orally, in October-November".

3.76 According to Audit the Ministry of Finance was insisting on the issue of inclusion of Spectrum pricing in the ToR of GoM constituted for Spectrum vacation since early 2006. In June 2007, Finance Secretary had informed the DoT that the matter had been discussed at Hon'ble Finance Minister's level and Ministry felt that a sound policy on Spectrum pricing was required. The Ministry again in November 2007 questioned the sanctity of continuing with a price determined way back in 2001 without any indexation or current valuation and sought review of the matter. DoT, conveniently quoting the 4 year old Cabinet decision of October 2003, justified to the MoF that it was authorized to calculate the entry fee for licenses depending on the date of payment, on the principles of TRAI recommendations of 2003 and that TRAI in 2007 had also not recommended any revision. Agreeing with MoF's views, Member (F) of the DoT had also sought **(Annexure – XXIX)** an in-depth analysis of the issue prior to taking any further action to which Secretary (DoT) also concurred. Hon'ble MoC&IT observed on the file, **"Officers have neither up to date knowledge of UAS guidelines nor have bothered to carefully go through file.....These types of continuous confusions observed on the file whoever be the officer concerned does not show any**

legitimacy and integrity but only their vested interest.....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".

3.77 In the above context, the Committee asked Ms. Manju Madhavan, the Former Member (Finance), Telecom Commission about her views on the Minister's adverse comments on her proposal to consider the Finance Ministry's contention. In reply Ms. Madhavan submitted:

"How can I comment on what the Hon'ble Minister said?"

3.78 Expressing surprise, the Committee asked the reason for her being so circumspect when the Minister questioned the *bona-fide* of the officers including her. In reply, Ms. Madhavan submitted:

"I would like to say this because I have a very clear conscience. I did whatever I thought was in the best interest of the Department and since I have a clear conscience, I have not considered these things. Perhaps with the wisdom of hindsight, I could say I should have done this or I should have done that. But whatever I did, I think, I did with absolutely clear conscience".

3.79 The Committee retorted that no body was questioning her conscience or personal integrity and what the Committee desired to know was that whether she brought it to the notice of the Finance Minister. Ms. Madhavan submitted:

".....I do not think specifically I have written to the Ministry of Finance saying that this has been said about me. I have not put in writing".

Asked to furnish the reasons for her inaction on the matter, she replies:

"I did not report it to the Finance Ministry in writing because at that point of time I never thought it was a case".

3.80 When the Committee desired to know which alternative, out of the three alternatives suggested by her, would have been the best one in terms of transparency and revenue generation, Ms. Madhavan submitted:

"As Member (Finance), I thought that auction was the best method. We had discussed this and I said auction is the most transparent and the best method that should be adopted".

CHAPTER - IV

IGNORING THE ADVICE OF THE MINISTRY OF LAW AND JUSTICE

4.1 Pursuant to the submission of the recommendations of the TRAI in the matter of 'Review of licence terms and conditions and capping of number of access providers and consequent upon the notification of the decision of the Government based on TRAI recommendation through a Press Release dated 19th October, 2007, there had been a spurt in the number of applications, 408 new requests in 8 days to be precise, received by the DoT for grant of UAS licences. This heavy rush of applications and to process them in a fair and transparent manner was a formidable situation that the DoT had to face and tackle.

4.2 So, on 26th October, 2007, the Member (Technology) DoT wrote a letter **(Annexure-XXX)** to the Secretary, Department of Legal Affairs on the matter so as to enable the DoT to handle such unprecedented situation in a fair and equitable manner which would be legally tenable. He also enclosed a Statement of Cases wherein four alternatives were suggested to deal with the 575 applicants for the grant of UAS licence and allotment of spectrum.

4.3 The Law Secretary accordingly mooted a note **(Annexure-XXXI)** on 1st November, 2007 for the consideration of the Minister of Law and Justice highlighting that the legal opinion sought for from the Attorney General/Solicitor General appeared to be too broad and the issues would have to be refined further. The Minister agreeing with views of the Law Secretary recorded on the note that "In view of the importance 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".

4.4 In response to the above observation of the Minister of Law and Justice, the Minister of Communications and IT wrote to the Prime Minister on 2nd November, 2007 **(Annexure-XXXI)** *inter-alia* apprising him that '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".

4.5 The Committee asked the DoT to explain the rational on the basis of which the advice of the Ministry of Law and Justice, and that too at the Minister's level, was overlooked and whether by doing so the Department did not deprive themselves of the benefit of the discussion on important telecom issues in an inter-Ministerial forum. In reply the DoT explained that the need for forming a EGoM arises when a new policy is being framed. Whereas, in this particular issue, no new policy for grant of UAS licences was being framed and the reference to the Ministry of Law was limited to arrange the opinion of Ld/Attorney General/Solicitor General on various possible options to deal with the large number of applications to enable DoT to handle such an unprecedented situation in a fair and equitable manner which would be legally tenable. However, the Ministry of Law, instead of arranging the opinion of Ld/ Attorney General/Solicitor General in the matter, gave its own opinion which was termed as out of context.

4.6 Not satisfied with the Department's explanation, the Committee asked whether requesting for legal opinion to handle the unprecedented number of applications in a fair and transparent manner was not akin to seeking suggestions for grant of licence and allocation of spectrum in a fair and transparent manner and in that case whether it was appropriate to term the Minister of Law and Justice's advice out of context, more so when the DoT had sought the legal opinion on its own volition. In reply, the Department stated that the reference dated 26.10.2007 of DoT to Ministry of Law and Justice with regard to issuance of LOIs was made in the background of larger number of applications. It was proposed to seek the opinion of the Ld. Attorney General of India/Solicitor General of India on the various suggested options to deal with the large number of applications to enable DoT to handle such an unprecedented situation in a fair and equitable manner which would be legally tenable. However, the Ministry of Law, instead of arranging the opinion of Ld/ Attorney General/Solicitor General in the matter, gave its own opinion which was termed as out of context by the then Hon'ble

MOC&IT. The reasons indicated by the then Hon'ble MOC&IT are contained in his letter dated 02.11.2007 to Hon'ble Prime Minister as reproduced below:

“(i) After the announcement of TRAI Recommendations on Review of Licence Terms and Condition for (Telecom) Access Service Providers on 28th August, 2007, and unprecedented number of applications were being received by the Department due to Recommendation of TRAI recommending “No Cap” on number of Licenses in a Service Area.

(ii) As unprecedented number of applications were being received, a cut-off date of 1st 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 Licenses 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 and 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 of 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”.

4.7 However, the One Man Committee (OMC) under Justice Shivraj V Patil on examination of appropriateness of procedures followed by DoT in issuance of licences and allocation of spectrum during the period 2001 – 2009, has in its report dated January 31, 2011, has observed that:

“Relating to important Government contracts Ministry of Law and Justice is required to be consulted. The DoT itself having sought opinion as to procedure to be followed for grant of UASLs, ignored the opinion of Ministry of Law and Justice in this regard, which required consideration of the matter by a Group of Ministers, turning it as out of context”.

4.8 The Committee, then, asked whether the legal opinion on the matter was finally obtained from the Attorney General/Solicitor General, as proposed in the Member(Technology) DoT's note dated 26th October, 2007. In reply, the DoT stated that in the letter dated 26.12.2007 from Hon'ble MOC&IT to Hon'ble PM (copy enclosed at **(Annexure-XXXIII)**) it was stated that:

".... Since the cases filed by Cellular Operators 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.

.....In these circumstances, the discussions with the 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 enclosed annexure to the said letter dated 26.12.2007 mentioned that:

".....Issue of Licence : The First-cum-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".

4.9 Further, before issue of first Press Release dated 10.01.2008 regarding grant of UAS licences, on 07.01.2008, the opinion of the Solicitor General was obtained. Copy of the same is enclosed at **(Annexure-XXXIV)**.

4.10 Referring to the above letter of the Minister of Communication & IT to the Prime Minister, the Committee asked for the copies of the file noting from the DoT to find out the opinion given by the Solicitor General on the matter of issuance of the letter of Intends in January, 2008. The Department furnished the relevant file noting **(Annexure-XXXV)**. A perusal of the same has revealed that the Solicitor General has given the following remarks:

"I have seen the notes. The issues regarding new Lols are not before any court. What is proposed is fair and reasonable. The Press Release makes for transparency. This seems to be in order".

4.11 When the Committee asked the Law Secretary in evidence whether any Ministry/Department could seek direct legal opinion from any Law Officer bypassing the Ministry of Law and Justice, he replied in the negative.

In the same context, the Attorney General stated in a written reply as under:-

"In my opinion, the Minister should not make references to any Law Officer directly. I took over as Solicitor General in 2004. Initially, Ministers used to make references to me directly. I consistently re-routed them through the Ministry of Law. Even when urgent opinions were sought I have insisted that they should be referred through the Ministry of Law. However, I would like to explain that the bulk of the work that a Law Officer does is in relation to litigation. In the course of the conduct of litigation it becomes necessary for a Law Officer to take decisions in relation to stand to be taken in the court and affidavits to be filed. The settled practice in this behalf is that such decisions are taken with reference to the concerned Ministry without reference to the Law Ministry. In litigation, matters cannot be referred to the Law Ministry at every stage. Once a Law Officer is engaged with the approval of the Law Ministry it is his duty and responsibility to conduct the case. During such engagement it is not the practice, nor is it practical, to make a reference to the Ministry of Law and Justice with regard to the presentation and conduct of the case".

4.12 The Committee, therefore, took note of the Minister of Communications & IT's information to the PM in his letter dated 26th December, 2007 that his discussion with the External Affairs Minister had enlightened him to take a pre-emptive and pro-active decisions on the issues concerned. And asked the office of the Minister of Finance (the then External Affairs Minister) to furnish a factual note on the claims of the Minister of Communication & IT. In response, the Private Secretary to the Finance Minister in his letter dated 25th March, 2011(**Annexure-XXXVI**) furnished the factual comments based on the Finance Minister's recollection, which are as under:

"In November, 2007, Hon'ble Prime Minister had asked Shri Pranab Mukherjee, the then External Affairs Minister, to apprise himself of the issues raised by COAI and some GSM spectrum with Shri A. Raja, the then Minister of Communications & IT, and Shri G.E. Vahanvati, the then Solicitor General (SG), in the context of proceedings pending in the TDSAT.

In this context, Shri Pranab Mukherjee held a meeting with MoCIT and SG in the first week of December, 2007. SG explained that the existing operators were insisting on the allocation of additional GSM spectrum on the basis of March, 2006 guidelines which they contended were adequate. There was no substance in this contention in view of the TRAI recommended revised criteria which was stricter and was under further consideration.

SG explained that as per the directions of the TDSAT, an affidavit had been filed in November, 2007 indicating the way forward. Shri Pranab Mukherjee briefly discussed the merits of the case and enquired whether any order had been passed by TDSAT. He was informed that there was no adverse order at that state.

The meeting lasted for about 15 minutes".

4.13 On 7th April, 2011 the Private Secretary to the Finance Minister wrote another letter (**Annexure-XXXVII**) wherein he stated that subsequent to his letter dated 25th March, 2011, the Finance Ministry had received copies of some papers sent by the PMO to the PAC. In the said papers, there was a reference to a "To Secret" note dated 26th December, 2007 on the subject of telecom licence and spectrum issues addressed by Shri Pranab Mukherjee, the then External Affairs Minister to the Prime Minister. As no copy of the note was retained in Shri Pranab Mukherjee's office, the said note alongwith the enclosures was obtained from the PMO and sent to the PAC.

4.14 A perusal of the then External Affairs Minister's note revealed that the Minister had *inter-alia* unambiguously opined that "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". He also recorded that "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".

4.15 The Committee then asked the Prime Minister's Office to furnish the reasons for not constituting a Group of Minister despite the suggestion of the Minister of Law and Justice. In reply, the PMO stated that no suggestion regarding setting up of a GoM was received in the PMO from the Law Minister, although the Communication Minister himself apprised the Prime Minister of the Law Minister's view in this regard alongwith the Communication Minister's view thereon.

CHAPTER – V

NON- ADHERENCE TO THE PRIME MINISTER'S ADVICE AND MISLEADING HIM THROUGHOUT

5.1 The then Minister of Communication and IT in his first letter dated 2nd November, 2007 (**Annexure-XXXVIII**) to the Prime Minister wrote as below:-

“After the announcement of TRAI Recommendations on Review of License Terms and Condition for (Telecom) Access Service Providers on 28th August, 2007, and unprecedented number of applications were being received by the Department due to Recommendation of TRAI recommending “No Cap” on number of Licenses in a Service Area.

As unprecedented number of applications were being received, a cut-off date of 1st 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.

The Department wanted to examine the possibility of any other procedure in addition to the current procedure of allotment of Licenses 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 and 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 of 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.

Now, the Department has decided to continue with the existing policy (first-cum-first-served) for processing of applications received up to 25th 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 25th September 2007.

As the Department is not deviating from the existing procedure, I hope this will satisfy the industry”.

5.2 The Prime Minister sent a letter on the same day (**Annexure-XXXIX**) to the Minister of Communication & IT highlighting the following fact:

“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, the

issues relate to enhancement of subscriber linked spectrum allocation criteria, permission to CDMA service providers to also provide services on the GSM standard and be eligible for spectrum in the GSM service band, and the processing of a large number of applications received for fresh licenses against the backdrop of inadequate spectrum to cater to overall demand. Besides these, there are some other issues recommended by TRAI that require early decision. The key issues are summarized in the annexed note. I would request you to give urgent consideration to the issues being raised with a view to ensuring fairness and transparency and let me know of the position before you take any further action in this regard”.

The Annexure to the PM's letter underlined the following important issues:

1. “Enhancement of subscriber linked spectrum allocation criteria.
2. Permission to CDMA service providers to also provide services on the GSM standard and be eligible for spectrum in the GSM service band.
3. Processing of a large number of applications received for fresh licenses against the backdrop of inadequate spectrum to cater to overall demand.
4. In order that spectrum use efficiency gets directly linked with correct pricing of spectrum, consider (i) introduction of a transparent feasible, and (ii) revision of entry fee, which is currently benchmarked on old spectrum auction figures.
5. 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”.

5.3 The Minister of Communication & IT in his second letter on the same day **(Annexure-XXXX)** *inter-alia* responded to the PM as below:

“Kindly refer to your letter dated 2.11.2007 regarding various issues related to Telecom sector. In this regard I have already written to you a letter earlier today (copy enclosed) clarifying the position on processing of large number of applications received for fresh licences. Before giving clarifications to the averments contained in the Annexure to your letter, 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 decisions taken by my Ministry and as such full transparency is being maintained by my Ministry and I further assure you the same in future also”.

With respect to processing of a large number of applications received for fresh licences against the backdrop of inadequate spectrum to cater to overall demand, in the said letter, it was conveyed that:

"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 DoT 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 services.

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".

5.4 On 26th December, 2007, the Minister of Communication & IT wrote another letter (**Annexure-XXXXI**) to the PM justifying his decision and assuming *inter-alia* that:

"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.....".

He further wrote as under:

"Since the file for issue of LoI to all eligible applicants was approved by me on 02.11.2007, it is proposed to implement the decision without further delay and without departure from existing guidelines".

5.5 The Prime Minister acknowledged the Minister's letter on 3rd January, 2008 (**Annexure-XXXXII**).

5.6 Audit pointed out that the suggestion given and the concerns expressed by the Prime Minister in his letter dated 2nd November, 2007 was ignored by the Minister of C & IT. The Prime Minister was misled when the Minister wrote to him that the issue of auction of spectrum was considered by the Telecom Commission and was not recommended whereas as a matter of fact TRAI recommendation of August, 2007 were never discussed by the full Telecom Commission between the date of submission of the TRAI's recommendation and the date of the Minister's letter i.e. 2nd November, 2007.

5.7 In the above context, the Committee asked DoT as to how it would have been unfair, discriminatory, arbitrary and capricious to auction the spectrum to new applicants, as reported to the Prime Minister. In reply, the DoT stated that the issue of auctioning spectrum *vis-à-vis* level playing field between the existing and new entrant in the telecom were deliberated by TRAI in their recommendations dated 28.08.2007 as submitted below:

"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 cost 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 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 in 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".

The Committee, then, asked whether the information to the Prime Minister that "an increase in the number of operators will certainly bring real competition which will lead to better services and increase teledensity and lower tariff" was correct in view of the fact that a number of companies after getting UAS licences in 2008 did not meet their roll out obligations. In reply, the DoT stated that in December, the rural tele-density was **8.35% (total rural telephone were 6,73,31,300)** and total tele-density was **23.89% (total telephone were 27,28,77,406 in India)**. In January 2011, the rural tele-density has increased to **32.19% (total rural telephone were 26,81,670,70 i.e. more than 20 crore phones were added in rural areas in this period)** and all-India tele-density has reached to **67.67%(total telephone were 80,61,356,36 i.e. more than 53.3 crore phones were added in India in this period)**. In 2007 the local call charges were about Rs 1/minute which has now come down to ½ paise/second. In December 2007, the average revenue per user (ARPU) for GSM services was **Rs. 261** per month and for CDMA services was **Rs. 176** per month. In September 2010, the ARPU for GSM services was **Rs. 110** per month and for CDMA services was **Rs. 73** per month".

5.8 While inaugurating the India Telecom-2007 on 12th December, 2007, the Prime Minister *inter-alia* stated (**Annexure-XXXXIII**). ".....At the same time, the revenue potential to the Government must not be lost sight of. After all, Government across the Globe have harnessed substantial revenue while allocating spectrum....".

5.9 In the above context, when the Committee desired to know as to whether the Prime Minister's advice/concern was taken care of either by the Minister or by the DoT, it was replied that no communication had been found. No communication has been found on record in DoT which was sent by the then Minister of Communications and Information Technology to the Hon'ble Prime Minister (PM) or by DoT to the Prime Minister Office (PMO) referring to the above concern/advice of the Hon'ble Prime Minister made on 12.12.2007 while inaugurating the India Telecom-2007.

5.10 The Committee asked, when the concern of the PM was not addressed whether he was not misguided when the Telecom Minister informed the PM that allotting 2G Spectrum in 2007-2008 at a price fixed in 2001 would increase tele-density and benefit the consumers, even though one applicant voluntarily offered to pay more price. In reply, the DoT just produced the extracts of the Telecom Minister's letter dated 2nd November, 2007.

5.11 Shri J. Gopikrishnan in one of his articles wrote that a very senior Law Officer was present in Shri A. Raja's residence on 2nd November, 2007 from 7 PM to 11.30 PM and he drafted all the two letters to the Prime Minister by Shri A. Raja. One of the former Additional Private Secretaries to Shri A. Raja confessed before the CBI that he was called to the Minister's residence to type the said letters and some other people were present there.

5.12 In the above context, the Committee asked the DoT to furnish the copies of the file notings pertaining to the drafting and approval of the said letters. In reply, DoT stated that no such records were available in the Department.

5.13 The Committee then asked the Prime Minister's Office to explain how the three letters of the former Telecom Minister to the PM was processed and examined by them. In reply, the PMO stated as follows:

"Shri A. Raja, the then Minister of Communications & IT, addressed a letter dated 2.11.2007 to the Prime Minister, stating that the Department of Telecommunications had wanted to examine the possibility of any other procedure, in addition to the current procedure of allotment of licences, and that the Ministry of Law & Justice was requested by the Department to examine the legal tenability of the alternatives. The Law Minister suggested referring the matter to an Empowered Group of Ministers. The Communications Minister stated that this suggestion was totally out of context and that the Department had decided to continue with the first-come-first-served basis for processing of applications".

"Separately, against the background of a number of issues relating to allocation of spectrum by telecom sector companies and sections of the media, the Prime Minister, vide letter dated 2.11.2007, sent a note summarizing the key issues and requesting the Minister of Communications & IT to give urgent consideration to the issues being raised, with a view to ensuring fairness and transparency, while also asking him to let the Prime Minister know of the position before the Minister takes any further action.

"The Minister replied to Prime Minister's letter dated 2.11.2007 on 2.11.2007 itself. He informed that there was, and is, no deviation or departure in the rules and procedures contemplated, in all decisions taken by his Ministry. He also stated that full transparency is being maintained by the Ministry and assured of the same in future also. On the licence processing and spectrum allocation issues, the Minister informed that auction was considered by TRAI and Telecom Commission and was not recommended. He stated that auctioning will be against level-playing-field for new applicants; that there is enough scope for allotment of spectrum to few new operators after meeting requirements of existing operators, mentioning in this connection the move for vacation of spectrum held by Defence Services; and that licensees waiting for spectrum for long after getting licence was not unknown to the industry.

"Principal Secretary to PM discussed the matter with Chairman, TRAI and Secretary, Department of Telecommunications, on 6.11.2007. It was noted that the issues emanated from the recommendations of the TRAI, made in response to a reference by the Department of Telecommunications under section 11(1)(a) of the TRAI Act, and that TRAI's recommendations have been accepted in some cases but modified/rejected in others. It was also noted that the matter involved a difference of opinion between the Minister of Law & Justice and the Minister of Communications & IT. Rule 7 read with paragraph (1) of the Second Schedule to the Government of India (Transaction of Business) Rules 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. A note bringing out this position was submitted, along with the draft of a reply to the Minister from the Prime Minister, for consideration. The then Private Secretary to PM recorded: "PM has seen. Before proceeding with the letter, PM wants a note put up to him on whether the action proposed to be taken by the Ministry is correct or not; whether it is justified in doing what is plans to do". In response, a note was submitted stating, *inter-alia*, that Department of Telecommunications intends to ignore the advice to refer the issue of allotment of fresh licences to an Empowered Group of Ministers and intends to proceed on first-come-first-served basis which, according to the Minister, will be a continuation of the existing policy. It was submitted that this decision did not appear to be in conformity with the Transaction of Business Rules, which provide 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". This issue was later discussed by the Principal Secretary and the then Secretary to PM with the Prime Minister. Prime Minister desired that the Principal Secretary to PM, along with the Cabinet Secretary and Secretary, Department of Telecommunications, examine all the issues included in Prime Minister's letter dated 2.11.2007 to the Minister of Communications & IT and issues pertinent thereto, including the Minister's response and issues brought to Prime Minister's attention by various sources and issues raised in the media; assistance of technical experts may be taken as and when required. Accordingly, discussions with the Cabinet Secretary and Secretary, Department of Telecommunications were scheduled with the Principal Secretary to PM on 20.11.2007.

As regards the third letter of 26th December, 2007, the PMO explained:

"The Communications Minister's letter was examined on file, along with the External Affairs Minister's note as well as an earlier note on the telecom issue, and a suggested course of action, following discussions between the then Secretary to PM and the Secretary, Department of Telecommunications, was submitted to the Prime Minister on 7.1.2008. It was conveyed by Private Secretary to PM, on 11.1.2008, on the file submitted on 7.1.2008, that the Prime Minister desired that the development concerning issue of licences also be taken into account. Accordingly, the original suggested course of action was resubmitted for the Prime Minister's consideration, with a clarificatory note dated 15.01.2008. The file was received back with Private Secretary to PM's note conveying that the Prime Minister wants this informally shared with the Department. The Secretary made a record regarding sharing informally with Secretary, Department of Telecommunications. Prime Minister acknowledged the letter on 3.1.2008"

5.14 Expressing surprise over the PM's desire to informally share the PMO's clarificatory note dated 5th January, 2008 with the DoT, the Committee asked for the relevant file notings from the PMO to see the sequence of the processing of the Communication Minister's letter dated 26th December, 2007. The PMO furnished the copies of the relevant file notings **(Annexure-XXXXIV)**.

5.15 A perusal of the said notings revealed that the process of examining the Communication Minister's letter commenced from 31st December, 2007 and the file was closed on 31st January, 2008. One important noting on the file was made by the Private Secretary to the Prime Minister on 23rd January, 2008 which reads as follows:-

- " – PM wants this informally shared with the Department".
- " – Does not want a formal communication and wants PMO to be at arms length".

5.16 Asked to state the action taken by the PMO on the then Finance Minister's note dated 15th January, 2008 **(Annexure-XXXXV)** regarding pricing of additional spectrum, the PMO replied that the Prime Minister saw the Finance Minister's note and no action was formally taken by the PMO on the note. The PMO further stated that however, the subject matter was already under submission for the Prime

Minister's consideration and, subsequently, the approach submitted after discussion with Secretary, Department of Telecommunications, was informally shared with the said Secretary. Many elements of this approach were similar to suggestions made in the Finance Minister's note. A series of consultations took place between the Department of Telecommunications and the Finance Ministry, including a meeting of the Telecom Commission on 15.1.2008, in which the issue of spectrum usage charges was on the agenda and was discussed, and meetings between the Ministers of Finance and Communications & IT on 30.1.2008, 29.5.2008 and 12.6.2008, which were followed by the two Ministers apprising the Prime Minister in July 2008 regarding what was agreed between the two Ministries with regard to (a) raising of spectrum usage charges for 2G spectrum, (b) pricing of spectrum for 2G allocation and (c) method of allocation of 3G spectrum. The Ministers also apprised the Prime Minister that formal decision will be taken in the Telecom Commission.

5.17 The Committee further noted that in his noted dated 15.1.2008, the then Finance Minister wrote to the Prime Minister:

"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."

"This leaves the question 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."

5.18 Further, the Committee note that the Prime Minister in his interaction with the Editor of the Electronic Media on 16.2.2011 said:

".....This was also discussed with the Finance Ministry because in terms of the Cabinet decision of 2003 the pricing and allocation of Spectrum was to be settled between the Ministry of Finance and the Telecom Department. Initially, of course, the Finance Ministry did ask for a high price of Spectrum but after many discussions, the two ministries agreed that as far as 2G is concerned, we have to live with the present system particularly with regard to the amount of Spectrum that is built and embedded into a license agreement. so this is the background why I did not proceed further with this matter of pricing of Spectrum, because if the Ministry of Finance and Ministry of Telecom both agree and they have the obligation of the Cabinet Decision of 2003 to decide on the matter and also since TRAI is an expert body and Telecom Commission has experts, if all of them are of the same view, I did not feel I was in a position to insist that auctions must be insisted".

On the question of Sale of Spectrum , the Prime Minister further clarified:

"..... I thought..... it was then the prevailing practice and Raja was continuing that policy, that as far as who gets licenses, the first come first serve policy, how it was implemented, that was never discussed with me. Licenses was not matter which got referred to me or to the Cabinet that was the decision exclusively of the telecom minister. Now subsequent events have shown that Companies sold their equity but I was told that they had not sold it to shareholders. they have sold it in a manner to dilute the equity of promoters.....".

5.19 In his speech in the Rajya Sabha on 24.2.2011, the prime Minister clearly stated

".....The Government's policy of the pricing of Spectrum was taken on the basis of a Cabinet decision of 2003 which specifically left the issue to be determined by the Ministry of Finance and the Ministry of Telecommunication. Contrary to the assertion of the Leader of the Opposition, the record clearly shows that the then Minister while he initially had different view which he communicated to me on January 15, 2008, subsequently consulted the Minister, Telecommunication and the two Ministers worked an agreed formula on Spectrum charges which was reported to me in a meeting on July 4, 2008. Furthermore, this decision that was put to me by the two Ministers was in line with the recommendation of TRAI in its Report of August 2007. In that Report the TRAI had clearly stated that only 3G Spectrum should be auctioned and the policy for 2G Spectrum should continue on the same basis as hitherto".

CHAPTER - VI

NOT CONSULTING THE TELECOM COMMISSION

6.1 By and in terms of resolution No.15/1/87-CAB-1 dated 11.4.1989 of the Government of India, Telecommunications Commission was set up. The constitution of the Telecom Commission is as under:

- (a) The Commission consists of full time and part time members;
- (b) The Secretary to the Government of India in the Department of Telecommunications is the ex-officio Chairman of the Commission;
- (c) The full time Members of the Commission are ex-officio Secretary to the Government of India in the Department of Telecommunications. One of these Members is Member for Finance; and
- (d) The Secretary and the full time Members of the Commission are to be drawn from the best persons available, including from within the Department of Telecommunications.

6.2 There are four full time Members of Telecom Commission. They are Member (Services), Member (Production), Member (Technology) and Member (Finance). Similarly, there are four part time Members. They are Secretary-Department of Information Technology; Secretary-Finance, Department of Economic Affairs; Secretary-Planning Commission; and Secretary-Department of Industrial Policy & Promotion.

6.3 The Telecom Commission is responsible for the following:

- (a) To formulate the policy of Department of Telecommunications for approval of the Government;
- (b) To prepare the budget for the Department of Telecommunications for each financial year and getting it approved by the Government; and
- (c) To implement the Government's policy in all matters concerning telecommunications.

6.4 As per the Rules of Business for Telecom Commission, 1989 all cases of the nature specified in **Annexure – A** to it shall be brought before the Commission which include *inter-alia* important matters of policy relating to telecommunications and proposals for acceptance of any rules and procedures which involve significant deviations from normal rules and procedures of the Government.

6.5 So far as the quorum for the meeting of the Telecom Commission is concerned, it is three full time Members present in person including the Chairman 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 authorized another Member to place before the Telecom Commission and bring on record on his views.

6.6 Audit scrutiny revealed that the recommendation of TRAI in 2007 were crucial from the perspective of the management of the Telecom sector and Spectrum management and yet they were not put up to the full Telecom Commission before the acceptance of the recommendations. Audit also pointed out that it was a fact that a meeting of the internal members of the DoT was held on 10 October 2007 to discuss the TRAI recommendations but there was nothing on record in the file to show as to why the recommendations of the TRAI were not taken to the full Telecom Commission. Neither the agenda papers nor minutes of the meeting of the internal members of the Telecom Commission held on 10 October 2007 to discuss the recommendations of TRAI were circulated among the other members of Telecom Commission i.e. Finance Secretary, Secretary Industry, Secretary IT and Secretary Planning Commission. As such, no meeting of the full Telecom Commission took place between the date of submission of the recommendations of TRAI i.e. 27 August 2007 and the date of issue of LOI to 121 applicants i.e. 10 January 2008 to discuss the recommendations of the TRAI. Thus DoT chose to consider the recommendations without the benefit of the inputs from four important Secretaries of the Government of India on crucial issues related to the Telecom sector.

6.7 The Committee asked the DoT to furnish the reasons for not placing the TRAI recommendations of 2007 before the Telecom Commission for their consideration, more so when the Authority had made a clear departure from their 2003 recommendations to auction licence/Spectrum. The Committee also desired to know

the reasons for not consulting the Telecom Commission before or at the time of granting 122 new UAS licences in 2008 in view of their recommendations in 2007 to discover the market mechanism for grant of new licences. In reply, the DOT stated that the matter was not placed before the 'Full Telecom Commission'. But the internal Telecom Commission in its meeting held on 10th October, 2007 deliberated the TRAI's recommendations on 'Review of licence terms and conditions and capping of number of access providers'.

6.8 The Department further stated that granting of UAS licence in the year 2008 was part of a process continuing since introduction of the UAS licensing regime in November, 2003. It was also stated that 51 UAS licences had already been granted prior to the grant of 122 UAS licences in 2008. No individual case for issue of UAS licences was placed before the Telecom Commission.

6.9 In an evidence held on 21st Jan, 2011 the Committee asked the Secretary, DOT to clarify what the Department meant by 'Internal Telecom Commission and whether there was any 'External Telecom Commission' too. In reply, the Secretary DOT submitted:

"I will clarify. The Telecom Commission has full-time members and part-time members. The full-time members are the member (Finance), Member (Technology), Member (Services) and the Chairman of the Telecom Commission, which is the Secretary. These are full-time members. The Secretary, Finance, the Planning Commission Secretary, the Secretary DIPP, Secretary DIT are part-time members in the sense that they attend the meetings of the Commission from time to time. This has been the practice".

6.10 On the same day in another evidence, the Committee asked Shri D.S. Mathur, former Secretary, DoT to clarify whether there was anything called 'Internal Telecom Commission' in the DoT. In reply, Shri Mathur submitted:

"No, Sir. There is a Telecom Commission, by that we generally mean that all the four Members of the Commission who are Members in the Department and the Chairman who is the Secretary next. When we think that the other four Secretaries should also be invited, then it is referred to as the Extended Telecom Commission".

6.11 In the above context, when the Committee specifically desired to know from the DoT, whether there was any reference to 'internal', 'extended', external' or 'full' Telecom Commission in the Rules of Business of the Telecom Commission, the DoT in a post-evidence reply stated that the Resolution, Rules of Business and the Rules for the Transaction of Business of the Telecom Commission did not contain any reference to Internal Telecom Commission/External Telecom Commission/Full Telecom Commission; only the term 'Telecom Commission' did find a place. The first meeting of the Telecom Commission with both full time and part time members was held on 1-7-1989 and the first weekly meeting of the Telecom Commission with full time members only was held on 10-7-1989. The records indicated that initially the weekly meetings were held and over a period of time the weekly meetings of the full time members of Telecom Commission came to be termed as meetings of the internal Telecom Commission.

CHAPTER - VII

ARBITRARY CHANGES IN THE CUT-OFF DATE

7.1 Before the Audit Report was laid in the Parliament Shri B.K. Syngal had already apprised the Committee in detail and with documentary evidences on the arbitrary decisions taken by the DoT in putting a cap on the number of applications for the UAS licences.

7.2 Audit scrutiny revealed that the TRAI Report of August, 2007 had recommended 'no cap' on the number of licences in any service area. Despite this recommendation of TRAI, the DoT issued a Press Release on 24th September 2007 stating that applications for issue of licences would be accepted only upto 1.10.2007. This action, in effect, conveyed fixation of an artificial cap in the number of licenses to be awarded. However, in its response (July 2010) to the report issued to the Ministry (July 2010), the Ministry has stated that it accepted the recommendation of 'no cap' by the TRAI in October 2007. It seems that the Ministry, by issuing the press release in advance in September 2007 had, in effect, circumvented the recommendation of TRAI by taking an action counter to the recommendation and its acceptance by DoT in October 2007. To further compound the earlier decision, of restricting consideration of applications received up to 1.10.2007, the DoT further advanced this date to restrict issuance of Letters of Intent (Lols) only to applications received up to 25.09.2007. This was ostensibly to avoid legal implications in view of the shortage of spectrum for GSM services.

A chronology of event from 24th September, 2007 to 25th January 2008 is as follows:

<u>Date</u>	<u>Procedural Details</u>
24/09/2007	Hon'ble MoC&IT conveyed through press release that no application under UAS will be accepted after 01/10/2007.
18/10/2007	Ministry accepted the Recommendations of TRAI. Lols were issued to the Reliance Communications Ltd and two others for dual technology.

19/10/2007	A Press release was issued stating that the TRAI's recommendations have been accepted by the DoT. Policy for the dual technology was also announced.
26/10/2007	Ministry of Law & Justice (MLJ) was requested to communicate the opinion of the Ld Attorney General of India/Solicitor General of India on the procedure to be followed.
1/11/2007	Opinion of the Hon'ble MLJ was received by DoT.
02/11/2007	DoT decided that only the applications received up to 25/09/2007 shall be processed which were 232 in number.
02/11/2007	The PM wrote to the MoC&IT to consider auctioning of spectrum and revision of entry fee in a fair and transparent manner.
02/11/2007	The MoC&IT wrote to the PM that sufficient 2G spectrum available to cater to the requirement of few new operators and more no. of operator will increase teledensity and bring down the tariff.
02/11/2007	The MoC&IT again wrote to the PM justifying the decision of amendment of cut off date and termed the suggestion of Ministry of Law and Justice for GOM as 'out of context'.
26/12/2007	The MoC&IT again wrote to the PM regarding the personal discussion with Hon'ble PM and External Affairs Minister on various issues including issue of dual technology and issue of new licences.
31/12/2007	The Secretary DoT and Member (Finance) DoT retired.
03/01/2008	The PM acknowledged the letter dated 26/12/2007 sent by the MoC&IT.
09/01/2008	A meeting of full Telecom Commission was scheduled for 09.01.2008 to discuss issues of new licences and allocation of spectrum to existing as well as new players by auctions postponed to 15.01.2008.
10/01/2008	Decision regarding cut off date being 25/09/2007 was conveyed through a Press Release in the afternoon of 10 January 2008.
10/01/2008	Through a press release, companies who had submitted applications on or before 25 September 2007 were advised to depute their authorized representative at 3.30 PM on 10 January 2008 to collect response(s).
10/01/2008	Out of 232 applications received up to cut off date 121 Lols were issued to applicants found eligible.
10/01/2008	All applicants communicated their acceptance.78 applicants complied with terms and conditions including submission of entry fee, PBG and FBG.
11/01/2008	Remaining 43 applicants complied with terms and conditions.

25/01/2008	All UAS licenses were issued to be effective from 25 January 2008.
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7.3 In the above context, the Committee asked the DoT whether the DoT had not put an artificial cap on the number of licences to be issued by fixing a cut-off date for receipt of the applications and whether in the process TRAI's recommendation of 'no cap' was not circumvented. In reply, the DoT stated that they had been issuing UAS licences in various service areas on continuous basis since introduction of UASL regime in 2003 subject to availability of spectrum. At the time of reference to TRAI on 13.04.2007, 53 application were pending. After the receipt of "No Cap" recommendations dated 28.08.2007 from the TRAI, there was a sudden spurt in the applications for UAS Licenses. Keeping in view likely availability of spectrum it was decided in the department to stop receiving further applications till further orders. Therefore, on 24.09.2007, a Press release was issued which appeared in the newspapers on 25.9.2007, stating that the new applications for Unified (Telecom) Access Services (UAS) Licences will not be accepted by Department of Telecommunications (DoT) after 01.10.2007 **till further orders.**

7.4 Asked to state whether TRAI was even consulted on the matter of receipt of large number of application after their 'no cap' recommendation and whether the matter was placed before the Telecom Commission, the DoT replies that they did not consult the TRAI on the matter nor the issue was placed before the Telecom Commission and there was no material on record as to why the Authority and Telecommunications were not consulted/apprised of the issue.

7.5 The Committee then pointed out that on one hand the Prime Minister was apprised by the then Telecom Minister that if more number of players were allowed, there would be greater completion resulting in lower tariff and better tele-density. On the other hand, the number of applicants were arbitrarily restricted by the DoT disregarding TRAI's recommendations. In this regard, the Committee enquired whether there was not an apparent contradiction in the stance of the Department. The Committee also desired to know whether giving just seven days time i.e. between the issue of Press Release and the cut-off date be considered as reasonable. In reply, the Department stated that in view of the increasing demand on spectrum in a substantial

manner, recommendation of TRAI was sought on 13.4.2007 on limit of number of Access Service Providers and on other terms and conditions of UAS licences. The recommendations of TRAI were received by DoT on 29.8.2007. TRAI had, inter-alia, recommended no cap on number of Access Service Providers in any service area among other recommendations on terms of UAS licence. In the meantime, the new UASL applications were poring in and till 24.9.2007, 167 applications from 12 companies for 22 service areas had been received. It was therein felt in DoT that it may be difficult to handle such large number of applications at any point of time. Therefore, it was proposed to announce a cut-off for receipt of UASL applications such that no new applications would be received after cut-off date till further orders. It was also proposed that a reasonable time to all who wish to submit new UASL applications may be given so that the decision is not challenged. Time period of 15 days i.e up to 10.10.2007 was proposed. On 24.9.2007, the then Hon'ble MOC&IT who while approving the file minuted that "in view of large number of applications pending and to discourage speculative players, we may close receiving applications on 01.10.2007 i.e. one month from the date of TRAI's recommendations". (A copy of the said file notings is at **(Annexure-XXXXVI)**)

7.6 However, the One Man Committee (OMC) under Justice Shivraj V Patil on examination of propriateness of procedures followed by DoT in issuance of licenses and allocation of spectrum during the period 2001 – 2009, has in its report dated January 31, 2011, has observed that:

"Procedure formulated whereby the processing of applications for grant of UASLs was restricted to only such applications which were received upto 25.9.2007 when the last date for receiving an application was stipulated as 1.10.2007, is not traceable either to the power vested in terms of any procedure laid out or satisfies the requisites of law in particular the principles of objectivity, fairness and transparency".

Report of the One Man Commission (OMC) is under examination.

7.7 The Committee again asked on what precise and pressing circumstances the cut-off date of 1st October, 2007 was advanced to 25th September 2007 and whether it did not compound the alleged arbitrariness and favoritism reply, the DoT stated that To

decide the number of LOIs to be issued in each service area, a note dated 02.11.2007, was submitted to Hon'ble MOC&IT, inter-alia mentioning that:

"In view of TRAI recommendation of no cap on number of operators, large number of applications were being received in the DOT. Therefore it was decided that no more applications shall be received after 1.10.2007 till further orders. Till the cut-off date for receipt of UASL application, 575 applications were received from 46 companies for 22 service areas. The list of these applications along with date of receipt, company wise and service area wise are placed at p.10/c and 11/c respectively. 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. 25.09.2007 may be processed as per the existing policy and decision on remaining applications may be taken subsequently.

WPC has indicated (in the linked file) 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 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 LOI's to be issued in each circle".

On the above note, Hon'ble MOC&IT, on 02.11.2007, decided that "LOI may be issued to the applicants received upto 25th Sept. 2007".

7.8 The Committee then queried about the basis on which the DoT suggested to the then Minister for processing only those applications which were received upto 25th September 2007 and the specific impediment that the Department faced in processing all the 575 applications received upto 1st October 2007. In reply, the DoT stated that a copy of the file noting 1/N to 20/N of file No.20-100/2007-AS-I/Pt.C where the such proposal was processed and subsequent discussions/deliberation took place along with approval of the Hon'ble MOC&IT is enclosed at **(Annexure-XXXXVII)**.

7.9 The One Man Committee (OMC) under Justice Shivraj V Patil on examination of appropriateness of procedures followed by DoT in issuance of licenses and

allocation of spectrum during the period 2001 – 2009, has in its report dated January 31, 2011, has observed that:

“However based on the note...., on 2.11.2007 the Minister took the view that the opinion of Minister of Law and Justice was out of context and decided that procedure for grant of new UASLs formulated earlier be continued, consequently the issue whether existing procedure was inconsistent with the extant policies/directions appears to have been ignored. On 2.11.2007, a further decision was taken to grant of LoIs to those applicants for UASLs who had applied till 25.9.2007 which decision also did not satisfy the requisites of law in particular the principles of objectivity, fairness and transparency”.

Report of the One Man Commission (OMC) is under examination.

7.10 A perusal of the above file noting revealed that it was mainly on the basis of the availability of Spectrum that it was decided to process the applications received upto 25th September, 2007. In this context, the Committee asked Shri Siddharth Behura, the former Secretary to confirm whether the cut off date of 25th September 2007 was announced on the basis of the availability of Spectrum. He submitted:

“No Sir, I do not think this was linked to the availability of Spectrum at all. Since 2003, I think on the issue of licences and availability of Spectrum, there has been no synchronization, no proper scientific analysis whether we are going to give two licences, four licences or five licences because there is Spectrum. I do not think that kind of a rational thing has ever been done in the Ministry”.

He further stated:

“The approach has not been taken. I have not been in any of the files that we have so much of Spectrum and therefore, we need to give so many licences. This has never happened”.

7.11 Referring to the above file notings of the DoT, which were furnished alongwith the written replies, the Committee desired to know whether it was not ironical that the then MOC&IT on 2nd Nove. 2007 approved the advancement of the cut-off date to 25th September, 2007 on the ground of availability of only 15MHz of Spectrum but while replying to the Prime Minister on the same day, he claimed that there was 60-65 MHz Spectrum still available for the 2G services. In reply, the DoT stated that Extracts of

the file notings on file 20-1000/2007-AS-I/Part 'C' (where decision by the Hon'ble MoC & IT took the decision to issue Lols to the applicants received upto 25th Sept. 2007:

Para 4. "WPC has indicated (in the linked file) on 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 Lol that spectrum allocation is not guaranteed and shall be subject to availability".

7.12 However, while providing reply to the question 15 (a) and (b) of the Questionnaire dated 26.11.2010 of Hon'ble PAC, in para 2 (page 26) of the Answer, while reproducing the above text, the portion underlined above was inadvertently omitted. The typographical error is deeply regretted. Actual file noting referred to above may be seen at 6/N of Annexure-10.

7.13 Extracts from letter No.20-1000/2007-AS.I dated 2nd November 2007 written by Hon'ble MoC & IT to Hon'ble PM.

Para 3.... "I would like to bring it to your notice that DoT has earmarked totally 100 MHz in 900 MHz and 1800 MHz bands for 2G mobile services. Out of this, so far 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 services".

7.14 It may therefore be seen that as on 2.11.2007, DoT had already allotted spectrum of about 35 to 40 MHz in both 900 and 1800 MHz bands. This allotted spectrum included the 15 MHz of spectrum already released by Defence by then. A GoM was constituted for vacation of spectrum by Defence Services. It was expected that after the decision of GoM, Defence would release the balance spectrum of 60 to 65 MHz in different service areas. The note dated 2.11.2007 as well as the letter dated 2.11.2007 are therefore consistent with each other.

7.15 The above matter were also clarified by DoT letter dated 7th February 2011. The inadvertent typographical error is deeply regretted.

7.16 The Committee then pointed out that the above said file notings of the Department had not mentioned anything about the availability of Spectrum in the 900 band and desired to know the basis on which the then Minister apprised the Prime Minister of the availability of Spectrum in the 900 band. In reply the DoT stated that extracts of D.O. letter No. 20-1000/2007 –AS-I dated 2nd November 2007 written by the then Hon'ble MoC&IT to Hon'ble Pm pertaining to availability to Spectrum is reproduced below:

PARA 2 of point 3". I would like to bring it to your kind notice that DoT 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 services".

7.17 As on 2.11.2007, DoT had already allotted Spectrum of about 35 to 40 MHz in both 900 and 1800 MHz bands. This allotted Spectrum included 15 MHz of Spectrum already released by Defence in 1800 MHz by then. The Spectrum of 35 to 40 MHz allotted include 20 to 25 MHz in 900 MHz band and 15 MHz in 1800 MHz band A Group of Minister (GoM) was constituted for vacation of Spectrum by Defence services. It was expected that after the decision of GoM, Defence would release the balance Spectrum of 60 to 65 MHz in different service areas.

7.18 Asked to furnish the file notings indicating inter-alia the original draft of the then Minister's letters to the Prime Minister their approval etc., the Department replied that no such file had been found on record in the DoT.

7.19 In response to another specific query, the Department stated that neither the cut-off date of 1st October, 2007 for receiving the applications was proposed nor were the applications for grant of UAS licences which were received after 25th September 2007 rejected.

7.20 The Committee, then asked whether all the remaining 343 applications had been processed and licences/Spectrum allotted after January, 2008. In reply, the DoT stated that the remaining 343 applications received from 26.09.2007 to 01.10.2007 are still pending with the Department. Hon'ble TDSAT, in para 116 of its judgement dated 31.03.2009, in Petition No. 286 of 2007 in the matter of COAI & Others. Vs. UOI & Others, has observed that:

“.....Already, as indicated by TRAI itself, there are 6 to 9 operators in each service area and there is demand for additional spectrum. It is therefore puzzling as to why TRAI recommended a no cap policy on the number of service providers. In our view, DOT would be well advised to review this policy keeping in view the various relevant parameters and take an appropriate decision...”.

7.21 Accordingly, on 22.07.2009, DoT sought recommendation of TRAI, inter-alia, on the policy of 'no capping' on the number of Access Service Providers in each service area. On 11.05.2010, TRAI in its recommendations on “Spectrum Management and Licensing Framework” has, inter-alia, recommended that:

- (i) 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. (Para 2.51).
- (ii) The Authority would like the Government to note that the recommendation made by the Authority in para 2.51 above is subject to the court decisions in this regard. The applicants will however be free to apply for or opt for a Unified licence, which is being recommended for future licences separately. (Para 2.52)
- (iii) All future licences should be unified licences and that spectrum be delinked from the licence. (Para 2.62)
- (iv) The Authority has already recommended that in so far as future licensing is concerned, spectrum should be delinked from UAS licence. Accordingly, there is no need for any cap on the number of access service providers. This recommendation of no cap is only if the future licences are delinked from spectrum. Otherwise, the Authority's specific recommendation is that no more licences should be given. (Para 2.71)

CHAPTER - VIII

THE FIRST-COME-FIRST SERVED CRITERION

8.1 As mentioned elsewhere a number of complaints were received in the Central Vigilance Commission regarding the First-Come-First-Served (FCFS) policy adopted by the Department in the issuance of UAS licences in January, 2008. On that basis, the CVC conducted a direct inquiry on the matter and found that there was no mention of the First-Come-First-Served policy in the guidelines issued by the DoT on 11th November, 2003 and even the guidelines issued by the Department on its website did not contain anything about the FCFS policy.

8.2 Shri Bijendra K. Syngal apprised the Committee that there were no basis and bases for the FCFS policy. It was a figment of imagination of the Babus at the DoT to suit the few beneficiaries of the largesse doled out by the Government. He further stated that the FCFS only served the greed of the speculators as had been proved beyond doubt by the sale of the equity by some companies at multiples of six or seven times of the price they paid in January, 2008.

8.3 In the above context, the Committee desired to know from the DoT about the Sanctity of the FCFS policy. In reply, the DoT stated that the term 'First-Come-First-Served (FCFS)' did not appear in the UAS licence guidelines dated 14.12.2005. However, para 11 of the guidelines states that, "Licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a Service Area". Further the decision for grant of UAS licence on FCFS basis was taken on 24.11.2003 when first time after introduction of UAS Licensing Regime on 11.11.2003, the issue of Letter of Intent for grant of UAS licences was being decided. It was, inter-alia, decided by the then Hon'ble MOC&IT to grant UAS licences on First-Come-First-Served basis as the announced guidelines 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. This was also stated therein that "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-Come-First-Served basis".

8.4 The One Man Committee (OMC) under Justice Shivraj V Patil on examination of appropriateness of procedures followed by DoT in issuance of licenses and allocation of spectrum during the period 2001 – 2009, has in its report dated January 31, 2011, has observed that:

“The FCFS procedure adopted and applied, that too without consistency, was clearly without any nexus with the objective of the selection of UAS licencees pursuant to NTP 1999. By applying FCFS, the best eligible applicant’s offer could stand excluded. This was opposed to the principles 98 of level playing field amongst prospective applicants. The criteria of FCFS as adopted by the DoT was neither contemplated nor was it consistent with the NTP 1999, recommendations of TRAI and the Cabinet decision. Added to this, the basis of reckoning, to apply FCFS was not consistently followed. Prior to 07.01.2008, the date of receipt of applications in DoT was reckoned for the purposes of FCFS and after 07.01.2008 the date of compliance of Lol was reckoned for purposes of FCFS. This was also not in tune with extant policy”.

8.5 The Committee desired the Department to furnish them the file notings of 24.11.2003 wherein the then Ministry of Communications and Information Technology had reportedly decided to grant UAS licences on FCFS basis. The DoT furnished the complete file notings. A perusal of the said notings revealed that nowhere the then Minister of Communications and Information Technology had himself minuted the FCFS policy. However, he approved the file wherein there had been mention of the FCFS policy in the following two contexts:

- (i) "It is also presumed that such new licence in the category of UASL would be on a first-come-first served basis on the basis of application".
- (ii) "As regards the point raised about grant of new licences of 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 the Spectrum first so it will result in grant of licence on first-come-first served basis".

8.6 Asked to furnish the complete details indicating inter-alia since when the FCFS policy had been adopted the level at which it was approved etc., the DoT replied that on 24th November, 2003, the Hon’ble MOC&IT approved the approach of granting of UAS licences on First-Come-First-Served basis as the announced guidelines 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. This in effect implied that an applicant who comes first will be granted the spectrum first so it had resulted in grant of licence on First-Come-First-Served basis. Prior to January 2008, UAS licences were being issued on First-Come-First-Served basis as per the date of application for grant of UAS licence in that particular service area. Even though, in some service areas, Lols were issued simultaneously in 2004 but finally the UAS licences were issued based on the date of application for grant of UAS licence. In one case in 2004, on two applications of different dates in a service area, Lols were issued simultaneously but the UAS licence was signed first with the later applicant as the earlier applicant sought time for fulfilling the conditions of the Lol.

8.7 When the Committee desired to hear the views of Shri Nripendra Misra, former Chairman, TRAI on the FCFS policy, he submitted in evidence:

".....there is no such principle. It is more like what one could say as prescription. What was the practice in DoT was that if the application came, and I am now talking of 2004-2005-2006-2007 period, the applications were registered date-wise. Based on the date, they were kept on record. they were kept on record for years also because the reference was sent to the TRAI on capping of Licence issue. "

But in the files of the DoT the first-come-first-served reference comes, if my memory is right that comes from the Spectrum. The procedure is, if a licence is granted a letter of intent is issued. Once you issue a letter of intent, you give 15 days' time that in 15 days' time the formalities including the deposit money etc. So, all those who get Lol, they do not reshuffle the order of priority. If somebody deposits money one one day, somebody deposits on third day or sixth day, because everybody has been given to complete the formality in 15 days; after having completed the formality, and after having signed the agreement, then the letter of intent is converted into a licence; once the licence is converted, then you submit the design and drawings of frequency coordination of the Wireless Planning Cell (WPC) WPC that a question was raised that all those who have got the licence, what should be the method for Spectrum allocation and how. And there, on file, it was decided that those who have completed the formality and those who have now also completed the designs and drawings, and now have come to the WPC, there is WPC administratively it will be on a first-come-first-served basis. So there is no rule as such which was there".

8.8 In the meanwhile Audit scrutiny of the subject revealed that the First-Come-First-Served (FCFS) policy earlier internally adopted in DoT for allocation of Spectrum,

was then extended for issue of new UAS licences. Under this policy, all applications are registered in the Central Registry Section of DoT where date of receipt and serial numbers are posted on it. Priority of applications is determined based on this date of receipt in the Central Registry. In a communication dated 2nd November 2007, the Hon'ble MoC&IT had even confirmed to the Hon'ble Prime Minister that the processing of applications was to be on the FCFS basis. However, audit found that DoT deviated even from the FCFS policy in letter and spirit. The applications submitted between March 2006 and 25th September 2007 were issued the Lols simultaneously on a single day, viz. 10th January 2008. A notice was issued through a press release giving less than an hour to collect the same. This decision to issue Lols simultaneously to all applicants was taken at the level of the Minister. As per the FCFS policy being followed those who were issued Lols were given 15 days to fulfill the conditions. This included submission of a Performance Bank Guarantee (PBG) and a Financial Bank Guarantee (FBG). By changing the FCFS criteria, some licensees, who could proactively anticipate such procedural changes were ready with the Demand Drafts drawn on dates prior to the notification of cut off date by DoT and could avail the benefit of first right to allocation of spectrum, having jumped the queue. The entire process followed lacked transparency and objectivity and has eroded the credibility of DoT.

8.9 In the light of the above findings of the C&AG, the Committee queried about the claim of the DoT that they had been following the FCFS policy in letter and spirit, its sanctity notwithstanding, in view of the fact that the applications submitted between March, 2007 and 25th September 2007 were issued LOIs simultaneously on a single date viz. 10th January, 2008. In reply, the DoT stated that after the reference dated 13.04.2007 of DoT to TRAI, several UASL applications received in the meantime got accumulated awaiting TRAI's recommendations and decision of Government thereof. It was decided that the Lols to all the eligible applicants who had applied upto 25.09.2007 will be issued simultaneously and an applicant who fulfils the conditions of LOI first will be granted license first. A press release on 10-1-2008 **(Annexure-XXXXVIII)** was issued stating that 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 whosoever complies with the conditions of LOI first will be granted UAS licence.

8.10 Another Press Release was issued on 10.01.2008 (**Annexure-XXXXIX**) where the applicant companies who have submitted applications to DOT for grant of UAS licences in various service areas on or before 25.9.2007 were requested to depute their Authorised signatory/Company Secretary/ authorised representative with authority letter to collect response(s) of DOT. Similarly, the companies who have applied for usage of dual technology spectrum were also requested to collect the DOT's response. All were requested to assemble at 3:30 pm on 10.1.2008 at Committee Room, 2nd Floor, Sanchar Bhawan, New Delhi. It was also mentioned that the companies which fail to report before 4.30 P.M. on 10.01.2008, the responses of DOT will be dispatched by post. All eligible LOI holders for UASL were to submit compliance to DoT to the terms of LOIs within the prescribed period (15 days from the date of issue of Lol) during the office hours i.e. 9.00 A.M. to 5.30 P.M. on working days.

8.11 All the eligible applicants who applied till 25.9.2007 assembled at 3:30 pm on 10.1.2008 at Committee Room, Sanchar Bhavan where all the Lols were issued simultaneously on First-come-first-served basis. All the applicants who applied till 25.9.2007 knew that their applications were being processed by the Department for grant to licence as clarifications on their applications upto 25.09.2007 only, were sought by the Department on 10.12.2007. Most of the companies complied with the condition of LOIs on the 10.01.2008 and rest submitted compliance on the next day.

8.12 Thereafter, service area wise UAS licences were granted as per the date and time of compliance of LOIs. However, date and time of compliance of LOIs and subsequently date of signing of Licence Agreements did not in any manner pre-judice their right as allocation of available spectrum to all of them in most of the service areas were made on same day. A tabular statement showing date of UASL application, date of Lol, date of signing of License agreement, effective date of license and date of allocation of spectrum service area wise is enclosed at (**Annexure-XXXXX**).

8.13 Asked to furnish the reasons for issue of 122 UAS licences on a single date, the DoT replied that in a communication dated 26th December, 2007 from the Ministry of Communications and Information Technology to the Prime Minister, the reasons to act without further delay were brought out at it was indicated therein that a large number of LOIs were proposed to be issued simultaneously.

8.14 Shri D.S. Mathur, while tendering evidence before the Committee, submitted that the FCFS policy had been in vogue in the Department. He further stated:

"..... the issue rose as to what should be the first-come-first-served policy. The Department has been dealing with the applications as they were coming in even from earlier. So, the applications when they came in were recorded at the Central Registry and numbered and they were handled one after the other in sequential order. so, this was once issue whether this should be followed in the same manner or there should be a change in it.

"Sir, I did tell the office, given the background that I have just submitted, that since there are certain major issues that had to be first sorted out before we could really process the applications that were pending, because if you do not know how to take up applications in a sequence, if you do not know how to grant a licence, how do you process the applications, therefore, I had instructed the office that while these matters are under considerations and a decision is likely to be taken, till such time these applications should not be processed".

8.15 Asked to state whether the FCFS policy, as had been in vogue in the Department, was applied properly in the allocation of UAS licences/2G spectrum in 2008, Shri Mathur replied that it was not permitted to be used.

8.16 When the Committee asked Shri Nripendra Misra, the former Chairman, TRAI as to what should constitute the appropriate adherence to the FCFS policy, he submitted:

".....But my understanding is that if the letter of intent says that please complete the formality within 15 days, then all those who completed the formalities within 15 days, they remain in the same order as they got the application date. And it is only after the 15th day that any other determination can take place".

8.17 On the same issue, Shri Siddhartha Behura, the former Secretary, DOT deposed in evidence:

"My observation was that if they have fulfilled the condition the date of seniority shall be determined by the date of application. this is the paragraph I added to the Press Note which was presented before me. it went to the Minister because there was a discussion, since he had already decided and the matter stand decided. I said that this is the only thing which came up before me for my consideration as far as the issue of licence is concerned and that as far as this issue is concerned, I will not be able to agree to the fact that somebody who has applied first will get relegated. So, naturally, the Minister decided to overrule. I have recorded it in the note sheet".

8.18 Asked to elaborate the stance taken by him to evolve the appropriate implementation of the FCFS policy, Shri Behura further submitted:

"There was a Press Note which came for my consideration. the first thing which came for my consideration regarding 2G was a Press Note which outlined that so many applications are pending and we shall, in the first instance, consider applications received upto 25th September, 2007 and it also said that we shall, in the first instance, issue a Letter of Intent and this Letter of Intent shall be issued simultaneously to all and whoever completes the formalities regarding Lol shall be granted a licence first and he can queue up for Spectrum separately.

It basically meant that somebody who has applied first meant he gets Spectrum first because licence and Spectrum as far as Telecom Department is concerned, unfortunately, continues till today to be bundles. If licence were on and Spectrum were to be treated differently perhaps it would have been different. But licence always meant a 4.4 MHz of Spectrum. So, a licence in effect meant Spectrum. So, actually if somebody comes first or second and he does not stand in the queue and gets relegated, I feel that he has not been served on the first come first serve basis. The fact that everybody was going to be issued letter simultaneously meant they were to come and fulfill the conditions first naturally because if they do not fulfill they stand to be relegated.

So, without knowing much about telecom, this exactly did not fall within the realm of telecom, I added a simple line to the Press Note saying that, however, if more than once applicant fulfils the conditions of an Lol on the same day – because the general feeling around was that everybody was going to fulfill the conditions on the same day, somebody may come at 10th or 7th, just because he is coming on 7th he is not going to get relegated because somebody has come on 10th and he has come six months before, I said inter se seniority shall be determined by the date of application.

This is the Press Note which was submitted to the Hon'ble Minister. Actually, the Minister had taken this decision that it shall be otherwise".

8.19 In the above context, the Committee asked DOT as to whether all the applicants who completed the formalities within 15 days as per the conditions of the LOI should have not received in the same order as they were on the applications date. In reply, the DOT stated that The draft Press release dated 10.01.2008 was amended by the then Hon'ble MOC&IT (**Annexure-XXXXXI**) by deleting the sentence that "However, if more than one applicant complies with Lol conditions on the same date, the inter-se seniority would be decided by the date of application". Accordingly, in year 2008, UAS licences were issued based on the date and time of compliances of the conditions of the Lols.

8.20 However, the One Man Committee (OMC) under Justice Shivraj V Patil on examination of appropriateness of procedures followed by DoT in issuance of licenses and allocation of spectrum during the period 2001 – 2009, has in its report dated January 31, 2011, has observed that:

"After decision of the Minister for grant of UASLs to all applicants who had applied upto 25.9.2007 and to recur priority from the date of compliance with Lol, first Press Note dated 10.1.2008¹³⁷ was issued at about 1.47 P.M. notifying the same. It was further notified that DoT has been implementing FCFS basis for grant of UASLs under which initially an application, which is received first will be processed first and thereafter, if found, eligible applicant will be granted Lol and then whosoever complies with the conditions of Lol first will be granted UASL. The said Press Note though for the first notified the decision of DoT to accord priority to applicants, who complied with Lol first, wrongly mentioned that DoT has been implementing such a policy though in the past such practice was never adopted. Further, the first Press Note dated 10.1.2008 was published on the websites of DoT and PIB only. The first Press Note dated 10.1.2008 contained critical information as to drastic change in procedure followed by DoT hitherto as the priority already acquired by applicants by virtue of date of submission of applications was to change. The said press Note affected the rights of applicants inter se. The publication on the websites without publications in newspapers and without individual communications to all the applicants was opposed to the requirements of transparency and fairness".

"The Lol for grant of UASL issued on 10.1.2008 stipulated fifteen days as the period within which the terms of Lol had to be complied with by an applicant. Having stipulated the period for compliance, there was no justification in granting priority to an applicant, who complied with Lol earlier to fifteen days and also earlier to other applicants comparatively, rendering it unfair".

CHAPTER – IX

ROLE AND RESPONSIBILITY OF TRAI

9.1 Setting up of an independent regulatory body was considered appropriate by the Government for proper regulation of the Telecom Sector after the entry of the Private operators into the field as well as with a view to assuring the investors that the sector would be regulated in a balanced, fair and competitive manner. Accordingly, the Telecom Regulatory Authority of India (TRAI) was established by virtue of the TRAI Act, 1997, which was amended in the year 2000, with the mandate of making recommendations either *suo-moto* or on request from the licensor on the following matters:

- (i) Need and timing for introduction of new service provider;
- (ii) Terms and conditions of licence to a service provider;
- (iii) Revocation of licence for non-compliance of terms and conditions of licence;
- (iv) Measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;
- (v) Technological improvements in the services provided by the service providers;
- (vi) Type of equipment to be used by the service providers after inspection of equipment used in the network;
- (vii) Measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;
- (viii) Efficient management of available spectrum.

9.2 The recommendations of Authority are not binding upon the Central Government. However, it is mandatory for the Central Government to seek recommendations of TRAI in respect of matters specified in (i) and (ii) above in respect of new licence to be issued to a service provider and it is required to forward its recommendations within a period of 60 days from the date on which the Government sought the recommendations¹⁹. Central Government can issue a licence to a service provider if no recommendations are issued from TRAI within said period or within such period as may be mutually agreed upon between the Central Government and TRAI²⁰. If the Central Government, having considered that recommendations of TRAI, comes to a *prima facie* conclusion that such recommendations cannot be accepted or needs modifications, it is required to refer the recommendations back to TRAI for its

reconsideration, and TRAI may within 15 days from the date of receipt of such reference, forward to Central Government, its recommendations after considering the reference made by Government. After receipt of further recommendations, if any, Central Government is required to take final decision.

9.3 TRAI also has regulatory and tariff setting functions, like ensuring compliance of terms and conditions of licence, laying standard of Quality of Service (QoS) to be provided by service providers and notifying the rates at which telecommunication has to be provided and ensuring effective compliance of USOs. It has also power to call upon any service provider at any time to furnish information or explanation, in writing, relating to its affairs. It is to ensure transparency while exercising its powers and discharging its functions. It is given powers to punish for violation of its directions. Thus, the role of TRAI in relation to services in telecom sector is vital.

9.4 In short, in the issue of licence allocation and pricing of Spectrum, expansion and provision of effective telecom service in the country, the mandate, role and responsibility of TRAI, are guided by the provision of Section of 11 of the TRAI Act 1997 (as amended).

9.5 The Committee desired to know the kind of recommendations of TRAI that were binding upon the Government and the kinds that were advisory. In reply, TRAI stated that as per the provisions of section 11(1) of the TRAI Act, the recommendations of the Authority specified in the clause (a) of sub section (1) of Section 11 were not binding upon the Central Government.

9.6 In the same context, Shri Brijendra K. Syngal apprised the Committee that in terms of section 11(1) of the TRAI Act, one of the functions of TRAI shall be to levy fees and other charges at such rates and in respect of such services as may be determined by regulations, such are, port charges, charges and revenue sharing, interconnection usage charges, etc. for which TRAI has absolute powers as per the TRAI Act. On licensing and other matters TRAI has recommendatory powers. However, the Government cannot reject any recommendations outright. The government has to make a reference back to TRAI before rejecting any recommendations.

9.7 The Committee thus asked as to whether any institutional arrangement had been put in place to have consultation/discussion between TRAI and DoT in the matters of development of telecom services including the allocation of Spectrum and whether any mechanism had been developed to sort out the differences of opinion between the Regulatory Body and the DoT on a particular issue. In reply, the TRAI stated that no such arrangement/mechanism had been there except for matters specified except for matters specified in sub-clauses (i) & (ii) of clause (a) of sub-section (1) of section 11 where the relevant provisions are as below:-

Functions of Authority

- (1) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the functions of the Authority shall be to:
 - (a) Make recommendations, either *suo-motu* or on a request from the licensor on the following matters, namely:-
 - i) need and timing for introduction of new service provider;
 - ii) terms and conditions of licence to a service provider;

As per proviso of sub-section (1) of section 11:-

Provided that the recommendations of the Authority specified in 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 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.

9.8 In view of the fact that TRAI could make *suo-moto* recommendations on any matter specified in clause (a) of sub section (1) of Section 11 of the TRAI Act, the Committee asked whether TRAI exercised their *suo-moto* recommendatory powers when the so called FCFS basis was adopted by the DoT in the issue of UAS Licence/allocation of 2G Spectrum. In reply, TRAI stated that issue of licences and allocation of Spectrum to the telecom service providers was being done by the DoT. The Authority also explained that the issue of FCFS criteria for award of telecom licences did not figure in the TRAI's recommendations of 2007.

9.9 On the same issue, Shri Syngal clarified that TRAI should have exercised its *suo-motu* powers to make recommendations on the creation of the 'First Come First Serve' (FCFS) basis for allocation of 2G Spectrum by the DoT. However, TRAI itself is also the reason for the creation of this FCFS as in its August 2007 recommendations, it had advocated 'no auction' of 2G spectrum, but had also said 'no cap' on the number of players who could apply for the 2G-UAS license. This meant that limited spectrum (finite resource) would have to be rationed amongst an unlimited number of applicants (infinite players).

9.10 Notwithstanding the FCFS aberration created, the TRAI could have released suo-motu recommendations on the issue and suggested a more appropriate methodology of allocation of spectrum via a market based methodology, which would have led to market based price discovery for the scarce resource. The clarification came too late from TRAI, after the damage was done by the Minister.

9.11 TRAI made its recommendations on allocation of Spectrum during the years 2003, 2005, 2007 and 2010. The extracts of the main recommendations in this regard are at **(Annexures-XXXXXII, XXXXXIII, XXXXXIV and XXXXXV)** respectively.

9.12 The Committee, then queried on what ground the DoT ignored the TRAI's recommendations of 2003 to introduce additional players through a multistage bidding

process and continued to grant UAS Licence/2G Spectrum or a price determined in 2001. In reply, the Authority stated that in para 7.39 of TRAI's recommendation of October 2003 the Authority had 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. However in para 7.30, the then Authority had stated that "Efficient utilization of spectrum by all service providers is of utmost concern to TRAI especially in a country like India where wireless subscribers are growing at a very fast rate. However, based upon the international statistics (number of cellular subscribers and allotted spectrum, please see annexure - IV), TRAI is of the opinion that existing operators need improvement in efficiency of utilization of the spectrum TRAI shall provide its recommendations on efficient utilization of spectrum, spectrum pricing, availability and spectrum allocation procedure shortly. DoT may like to issue spectrum related guidelines based on the recommendations submitted by TRAI". Subsequently in November, 2003 the then Secretary, TRAI, issued a letter DO No. 101-35/2003-MN dated November 19, 2003.

9.13 In the same context, Shri Syngal stated that it was unclear why the DoT might have chosen to ignore TRAI's recommendations of 2003. Quite clearly the step has led to the creation of the current situation and substantial losses to the public exchequer. It is enjoined upon DoT as well as the TRAI to have done their home work properly. DoT did not put the right questions to TRAI and TRAI chose to ignore its own recommendations; may be behind the scene activities to do the job right. What has been stated by TRAI is that it could have created a non-level playing field for the new entrants, how has not been explained by TRAI? TRAI has just kept quite on this subject.

9.14 The Committee then desired to know the compulsions on the part of TRAI to make a *volte-face* in 2007 when they recommended that there should be no question of 2G Spectrum. In reply, TRAI stated that in its recommendations of In its recommendations of 2007, the then Authority in para 2.79 had 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(800/900/1800MHz), 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.

9.15 On the same issue, Shri Syngal opined as follows:

"Again there is no clear answer to why the TRAI has overturned its own recommendation of 2003 in which it had advocated the auctioning of new licenses. The one and only reason which comes to my mind is deliberate attempt by DoT not to have posed a question on pricing of the spectrum. The Regulator might have used the same to either keep quiet or do what he did. It could also be some instructions not to recommend more ethical process.

9.16 The August, 2007 recommendation, which advocated 'no auction' of 2G spectrum led to the creation of the FCFS and allocation of 2G spectrum at throwaway prices. Subsequently, some of the companies, which acquired spectrum at these throwaway prices, divested stake at multiple valuations, establishing the fact that spectrum had been short-sold leading to massive losses to the public exchequer.

9.17 When Shri Nripendra Misra former Chairman, TRAI was asked to state the reasons for TRAI's overturn, he submitted in evidence:

"..... The issue of auction was very clearly recommended in 2003 and in fact, a multi-stage auction was recommended and not only that, it was also written that it will be in a same manner as the fourth cellular licence was granted. So, the fourth cellular licence which was granted on the auction basis – the same methodology for auction was recommended.

9.18 After that, there was no reference from the Government. That is what I said, that from 2006 onwards we were writing to the Government that please take TRAI recommendation on the subject and the Government said, I read the last line of the letter from the Government 'no further useful purpose will be served by entering into correspondence on this subject'.

9.19 So, the Government, in their wisdom, decided that there is no need for taking recommendation of TRAI because UASL licence is the same UASL licence granted in past. What was recommended in 2007 was again a reminder that the market dynamics has changed and, therefore, Government should evolve a mechanism to capture the market features. We did not go in great detail. In case of 3G we went in great detail because the Government had said-please give us the procedure and the manner of 3G spectrum auction. So, we gave the detailed procedure of auction, how auction will take place, what will be the criterion etc. But in the reference of April, 2007 on which we were sending recommendation in 2007 on 2G, there was no reference from the Government at all on the methodology for grant of licence and the manner in which licence should be granted.

9.20 Asked to state the references made to the TRAI, Dr. J.S. Sarma, the Chairman, TRAI stated in evidence:

"On 13th April, 2007, the reference was made. At page 143 of the recommendations given on August 28, 2007 in that document, the Government have made the following reference. It says, in order to ensure policies, keep pace with the changes and developments in the telecom sector, the Government is contemplating to review the following terms and conditions in the access provider license. 1) substantial equity holding 2) transfer of license 3) guidelines on merger and acquisitions 4) permit service providers to offer access service using combination of technologies 5) roll out obligations 6) requirement to publish printed telephone directory, etc. TRAI was requested to furnish recommendation in terms of clause 11(1)(a) of TRAI Act as amended by TRAI Amendment Act.

Shri Nripendra Misra further apprised the Committee in evidence:

"... .. These are the only six points on which they sought our recommendation. They did not seek recommendation on grant of new licence. But since that capping point was there, we did repeat 2003 recommendation. What we recommended is in para 2.73. The allocation of spectrum is after the payment of entry fee and grant of licence. The entry fee as it exists today is in fact a result of the price discovered through a market based mechanism applicable for the grant of licence to the fourth cellular operator which is in 2002. In today's dynamism and unprecedented growth of telecom sector the entry fee determined is not be realistic price for obtaining a licence. It needs to be reassessed through a market mechanism. So, the recommendation existed in 2003, reiterated in 2007, and that is auction should be the mode for grant of licence,. Now there is a very important point just now because often this is mentioned that TRAI changed its recommendations. Actually what later in the body of recommendation comes is, since spectrum is a part of licence, on the

issue of grant of licence it says please find a market mechanism. On the issue of allocation of spectrum because it is part of the licence and since 900 and 1800 MHz has already been given to the incumbents, therefore, TRAI made a recommendation that as far as 900 and 1800 MHz are concerned auction perhaps may not be proper but all other spectrum bands in future should be auctioned. What it means is applicable to all 3G is not a licence. 3G is part of UASL. It is only the spectrum band which has been auctioned. 2.1 GHz has been auctioned. So, the TRAI recommendation was, leave 900 and 1800 and auction in future all other spectrums in future but as far as licence is concerned please auction before granting licence.

Dr. J.S. Sarma, Chairman TRAI further apprised:

"..... According to TRAI, every time a licence is to be provided, the recommendations of the Authority have to be sought. The Government on the other hand feels that every time a new licence is to be provided, there is a difference between a licence to every service provider and a general class of licence, this recommendation of the Authority is required only when a new licence is to be provided".

9.21 Asked to state whether any legal advice was sought and obtained on the matter, another representative of the TRAI submitted:

"As per our legal adviser also, what Chairman has said when any new applicant is given a licence though the existing licence the UAS licence, then also the Government should seek recommendation from us. The TRAI had written to the Government, at least twice which I know, that this is the case and we had requested the DoT also to take the advice of the Law Ministry if they had nay doubt".

9.22 The Committee then asked about the response of the Government on the matter. In reply, the Chairman, TRAI stated:

"To be best of my recollection, in January, 2008 a letter was written by the then Chairman, TRAI but after that I am not very sure whether there was any response".

9.23 In this regard, when the Committee desired to know from Shri Nripendra Misra as to the response of the Government to TRAI's legal opinion and his letter dated 14th January, 2008 (**Annexures- XXXXXVI**) he deposed:

"The letter sent by TRAI was that please take the recommendations from TRAI on the grant of a licence and also take recommendations on the terms and conditions of the licence. There were series of letters and there was also legal

opinion sent, further a request made that it was better to seek opinion of the Law Ministry on the subject. We received a reply from the Government that our legal opinion i.e. TRAI is not acceptable. Their judgment, if it is the same type of licence, that means, if it is a UASL licence and again UASL licence and again UASL licence, it is a new licence in a circle. Therefore, the Government did not accept the recommendation of TRAI. Why I raise this point is because this must be very clear that on grant of licence, TRAI did not make recommendation because there was no such reference. It was only suo-moto that we said in 2007 that the market dynamics must be taken into consideration.

Shri Misra further apprised:

".... We had also sent series of letters saying that please take the entire recommendation into consideration because they have got inter-linkages and let there be no, for want of any better word, I would say 'cherry picking'. The Government as per law are competent to accept one and not accept another part of the recommendation. But we had said that please take the entire thing in totality, otherwise, the integrity of recommendation is getting compromised. Government went ahead some time in 2007 and on their own they decided to have certain criterion, certain cut off point of the date and press notes were issued, all that is a matter of record and I have no comments on that and licences of 2G were issued. Also in 2007 reference, the Government had sought our recommendation on merger and acquisition. So, we had also given our recommendation on merger and acquisition partly. It was accepted in parts and was not for acquisition accepted. But the Government was competent to take that decision and the licences were thus given and the rest which followed is known that in some of the companies, there was a foreign telecom companies making investment had come".

On the issue of legal opinion, Shri Misra submitted:

"..... We have a position of Advisor (Law) in TRAI. It is of the rank of the Additional Secretary. The person who was servicing this Division was Additional Secretary (Law) on deputation to TRAI. Presently, he is Secretary (Legislative matters). It was his opinion which was enclosed with our letter from TRAI saying that 'please seek opinion of TRAI if you wish to grant any new licence'. In our letter, of course, we suggested that 'please take opinion of the Law Ministry on this particular opinion which is enclosed".

9.24 In response to a specific query, Shri Misra replied that his letter had not been replied on the points raised.

9.25 Asked to state specifically whether auction of Spectrum including that 800, 900 and 1800 MHz bands should be the most favored method, the Chairman, TRAI deposed:

"Sir, generally auction is the correct procedure. But so far as the spectrum in 800, 900 and 1800 MHz, that is the 2G spectrum is concerned, we have clearly pointed out in our recommendations why auction is not feasible, but at the same time it does not mean that we should continue with that old price, that is why we have related it to the auction determined price which is in the 3G".

9.26 When the Committee enquired about the specific impediments that TRAI could anticipate in the auction of the Spectrum in the 800, 900 and 1800 MHz bands, the Chairman, TRAI stated that the Authority in the context of 800, 900 and 1800 MHz bands was conscious of the legacy, the prevailing practice and the over riding consideration of the level playing field.

9.27 Asked to elaborate, the Chairman, TRAI submitted:

"In the 2G bands, allocation through auction may not be possible as service providers were allocated spectrum at different points and at different times of their licences and the amount of spectrum varies from 2.4 to 2.10 except for dual use technologies. Therefore, to decide the cut off after which the spectrum auctioned will be difficult and might raise the issue of level playing field".

9.28 The Committee then queried whether level playing field should have given an overriding consideration for not auctioning the 2G Spectrum as market forces could have determined it. In response, the Chairman, TRAI stated:

"I am only reading it from the Report".

9.29 When Shri Nripendra Misra, during whose tenure, the TRAI recommendations of 2007 were finalized, was asked to state whether TRAI's recommendation against auction of 2G Spectrum was appropriate, he submitted:

" ... my present view – and I remain committed – is, there is no other procedure to be followed but auction. I will even go to the extent, if you ask me as to whether I would like to correct my recommendation that 900 and 1800 MHz spectrum should be auctioned, I will say that there should be auction of all the spectrum and licence should be de-linked from spectrum totally. In that way, your licence fee will come down and spectrum will be put in the marketing domain which happens all over the world.

Shri Misra further submitted:

"Sir, two points are self-evident. One is that the value of spectrum as a scarce resource more so when there was a visible shortage of spectrum. In 2007-2008, there was a shortage of spectrum unlike 2003-2004.

Secondly, the kind of exponential growth which took place, unlike 2002-03 and 2003-04, both these things clearly indicate that the price of spectrum was undervalued because even if it is licence plus spectrum auctioned in 2001, actually that is giving the price of spectrum. So, the price of spectrum not determined through market process was definitely much lower and that becomes more than established when a foreign company comes and wishes to participate in new licence company's equity. I have seen the press release of the Ministry wherein it says that whatever money has come is FDI and it will be used in infrastructure expansion. But still the truth remains that the so-called high price bid is nothing but the price of spectrum and that gets more than established in 3G".

Dr. J.S. Sarma, Chairman, TRAI summed up by saying:

"We have gone by the principle that spectrum must have its price. When we considered these recommendations between July, 2009 and May, 2010 and when we gave recommendations, it must be noted that we were already faced with the situation of fait accompli. We were dealing with the situation of ensuring a level playing field and also ensuring that the price of spectrum is properly determined. It is for beyond 6.2 MHz and beyond 20 years. We said that 6.2 is the contractual spectrum".

9.30 In 2003, TRAI had recommended a 'No Cap' principle in the number of players and reiterated the same in their 2007 recommendation. Shri B.K. Syngal apprised the Committee that the 'No Cap' on recommendation of TRAI meant that limited Spectrum (Finite source) would have to be rationed against an unlimited number of applications (infinite players).

9.31 In the above context, the Committee desired to know the basis on which TRAI recommended that there should be 'No Cap' on the number of Access service providers in any circle/service area. In reply, TRAI just reproduced para Nos. 2.32, 2.34, 2.35, 2.36 and 2.37 of their August, 2007 recommendations.

9.32 Asked to state categorically as to whether TRAI ascertained the availability of Spectrum in various bands, the Authority replied that as per the available records, no

letter was written from TRAI to DoT to ascertain the amount of Spectrum, available in various bands while recommending 'No Cap' in August, 2007.

9.33 But Shri Nripendra Misra had a different version to share with the Committee.

He deposed in evidence:

"... .. We did write to the Government to please provide information as to how much spectrum is available. It is on record. Not only that, based on our in-house research, TRAI also wrote to the Government that as per our information, the present spectrum already allocated to the service providers and whatever now remains is annexed. Please confirm whether what we are saying is right or wrong. Even that letter was sent. the Government did not share since spectrum management is their privilege".

9.34 Asked to state whether it was within the purview of the DoT to deny such an information to TRAI, Shri Misra replied:

"The Act says that the management of Spectrum is the Department's responsibility. So, legally, TRAI could not force them to give the information".

9.35 The Committee then asked TRAI whether it should be prudent to permit unlimited service providers to enter the field in view of the scarce nature of spectrum. In reply, TRAI stated that in their recent recommendations In its recent recommendations on 'Spectrum Management and Licensing Framework' dated 11th May 2010, this Authority has considered this issue in para 2.51 and recommended that keeping in view the scarcity of spectrum and the need to provide the contracted spectrum to the existing licensees, no more UAS licence linked with spectrum should be awarded.

9.36 The TRAI recommendations of May, 2010 advocate that all UAS licences should be allocated 6.2 MHz GSM spectrum which was beyond the contracted amount of 4.4 MHz for UAS licences granted post October, 2003. In this context, the Committee desired to be apprised of the reasons for the Authority's recommendation for additional allocation of 1.8 MHz spectrum. In reply, TRAI stated that recommendations to Recommendation to allocate additional spectrum of 1.8 MHz has been made keeping in view the contractual obligation in the UAS License, already

entered into by the Government before the issue was referred to TRAI in July, 2009. The Authority has dealt with this issue at length in Para 3.105 to 3.109 of the above mentioned recommendations.

9.37 The Chairman, TRAI, further submitted in evidence:

"..... we have clearly indicated why it is 6.2 MHz by reference to the licensing provisions of the licences issued from 1994-95 onwards. It has been clearly demonstrated that the contracted spectrum is 6.2 MHz and therefore those who have 4.4 MHz are legally entitled to get 6.2 MHz.....".

9.38 Audit pointed out that 9 operators as per the details below had been allotted spectrum beyond the upper limit laid down in the UASL agreement. Thus while the DoT, on one hand, was not processing pending applications for licence due to non availability of spectrum, on the other hand it was allotting spectrum to existing operators beyond the contracted limit without any upfront charges being imposed or without determination of market price of spectrum. Based on the amount charged from CDMA operators for grant of GSM spectrum in 2007, the value of spectrum held by these operators beyond the contracted unit worked out to Rs.2561 crore though its market value on date would be higher.

9.39 The Technical Committee appointed by Hon'ble MoC&IT for "Allocation of Access (GSM/CDMA) spectrum and pricing" recommended in May 2009, that the additional spectrum assigned beyond 6.2+6.2 MHz in an service area should attract an upfront charge equivalent to the 3G auction price from the date of assignment.

9.40 Subsequently, TRAI also recommended in May 2010 for charging the additional spectrum held by operators beyond the licensed quantity which is under consideration of the Government. In the event of these recommendations being accepted, the additional flow of revenue to the Government would come to Rs. Rs.36,993 crore.

Name	Amount of additional spectrum (MHz)	No.of Circles
Aircel	3.6	1
Bharti	32.4	13
BPL(Mumbai)	3.8	1
BSNL	61.6	19

IDEA	12.6	6
MTNL(Delhi & Mumbai)	12.4	2
Reliance	1.8	1
Spice (Punjab)	1.6	1
Vodafone	19.6	7

9.41 In the above context, 2nd when the Committee desired to hear the views of the TRAI on the matter, the Chairman, TRAI submitted:-

"First of all, our recommendations contain not only the charging for excess spectrum, it also speaks of rationalization of spectrum charges and also reduction in Uniform Licence Fee. The total amount of money the service providers will have to pay towards the excess spectrum is not something that will cause a very heavy burden. It is true that they have to pay, but it is not something-when you see the uniform licence fee and also rationalization of spectrum charges – that is likely to be that heavy. It is a question of principle here.

Secondly, as regards the point you made regarding some people not having to pay more and some people having to pay more, it is a question of how much excess spectrum one has. If somebody has excess spectrum, they have to pay. So there is no distinction between one service provider and the other service provider.

In so far as the issue of CDMA spectrum being clubbed with GSM spectrum is concerned, this issue has already been dealt with. This recommendation has already been made by TRAI. Government have decided that they will not club the two together".

9.42 The Committee asked whether it meant that the GSM players had to cough up more money. In reply, the Chairman TRAI responded:

"That is because some GSM players who have excess spectrum will have to pay more money. We have not asked them to pay from the date of allotment of spectrum which was the demand of various stake holders. We have said that they will pay only for the balance period their licences".

9.43 When the Committee desired to know from the DoT the latest position on the TRAI's recommendation for charging the additional spectrum held by the operations beyond the licenced quantity and action taken to review the allocation of excess

spectrum as per the concerns expressed by several Members of Parliament, the DoT replied that the initial spectrum of 4.4 MHz/6.2 MHz is allotted to the GSM operators as per the provisions of licence conditions of their respective license agreements, subject to availability. Additional spectrum is also considered as per the criteria orders/guidelines etc.

9.44 TRAI in its recommendation made on 11th May 2010 mentioned that the subscribed linked criteria, as adopted by the Government in January 2008 be kept for six months to enable all operators who are already qualified for the additional spectrum based on the prevalent subscribed linked criteria or those who would be qualified within the next six months, to be assigned additional spectrum subject to availability and the Prescribed limit recommended as in Para below which specified that:

"the limit on spectrum to be assigned to a service provider will be 2X8 MHz for all service areas other than in Delhi and Mumbai where it will be 2X10 MHz. Similarly for CDMA spectrum the Authority recommends that the limit on spectrum will be 2x5 MHz for all service areas and 2x6.25 MHz in the Metro areas for Delhi and Mumbai".

9.45 TRAI has further, on 18.05.2010, requested the Government to await its recommendations on spectrum pricing and reframing. On 8.2.2011, TRAI has made its further recommendations regarding spectrum pricing. After examining the above recommendations of TRAI, the Committee of DoT has submitted its report on 22.02.2011. Subsequently, on these recommendation of TRAI, Hon'ble MoC&IT has also had interaction with the telecom service providers on 8.3.2011. Final decision on these recommendations of TRAI will be taken in due course of time.

9.46 As regards the crossover technology issue, the DoT granted 35 Dual Technology licences in October, 2007 based on the recommendations of the TRAI. In this context, when the Committee desired to know the circumstances that led to TRAI's recommendation for crossover technology, Shri Nripendra Misra submitted in evidence:

".....That, in fact, arose from one application from one of the existing service providers. It was Reliance which moved an application that they should be

given spectrum for GSM technology as well, and the argument was that licence is technology neutral. Therefore, whether they use CDMA technology or they used GSM technology, they should not be constrained because of that, the option to exercise should be theirs, grant of spectrum is a privilege of the Government depending on the availability. When this application came, the phrase which was used was cross over, that is, you are having CDMA, can you also cross to GSM, that means you can offer twin technologies in the same circle.

9.47 Asked to state whether it was not the operators themselves who preferred their own technology i.e. either GSM or CDMA and whether it was prudent to permit the CDMA operators to provide GSM service also in the same circle, Shri Misra submitted:

".....on the cross over technology, it said that yes it is true that the licence is technology neutral, but after having made a choice about the spectrum band – as I said, 800 MHz is for CDMA and 900 MHz and 1800 MHz for GSM- one has already decided the growth path. While there is no bar to cross over, but one must pay once more the same fee which was paid by GSM player in the same circle. Although it was not welcomed by CDMA players because they thought they are being punished twice, but finally it got implemented. Those who got the facilities of cross over, whether it was a GSM player to CDMA or CDMA player to GSM, they paid the fees as was required and they were permitted to offer services. No new licence was required for it because the same licence could grant it".

9.48 The Committee, then, asked TRAI regarding the specific studies made by the Authority before recommending grant of spectrum under combination of technology. In reply, TRAI stated that while framing its recommendations of 2007, on the issue of grant of spectrum under the combination of technologies, the then Authority studied the following documents:-

- ☐ New telecom policy, 1999 (NTP'99) along with its addendum issued on 11th November, 2003
- ☐ Principle of technology neutrality underlined in the common regulatory framework for Electronic Communications Networks and Services of the European Union.
- ☐ Various clauses in the Unified Access Service License and CMTS License
- ☐ International practice in the allocation of spectrum meant for different technologies to the same service provider.

9.49 As regards delinking allotment of spectrum from issue of licences, Shri Nripendra Misra apprised the Committee the Government did not accept TRAI's recommendation made at various points of time to separate spectrum from licence. He elaborated:

".....The TRAI had then recommended that the licence and the spectrum should be separated. This recommendation was repeated in 2003 and in 2005 that licence is one thing and spectrum is another thing, therefore, one could put a much lower licence fee but put spectrum in the auction mode because that is the national asset. This issue of spectrum separation from the licence, somehow the Government did not find acceptable and even today the licence and the spectrum are together for all types of licence. The recommendation obviously of TRAI remains but the Government has not accepted it".

9.50 The Committee then desired to know from TRAI about the percentage of the acceptance of the Authority's recommendations by the DoT. In reply, the Chairman TRAI stated in evidence:

".....while we normally see that a large number of our recommendations are accepted and acted upon, but at the same time, we also note that there are cases where they do not accept our recommendations".

9.51 Asked to state the main reasons for the Government's reluctance to accept the key recommendations of TRAI, the Chairman, TRAI submitted:

"The structure of the Authority in India is different from that of certain other countries where most of the licensing and spectrum related functions are actually performed by the regulator and not by the Government. That is the major difference. for instance, OFCOM in UK or FCC in USA and other regulators, German regulators, they actually do the licensing as well as the spectrum related functions whereas these are continued to be performed by the Department in India".

9.52 When the Committee queried about the measures contemplated by the Authority themselves to improve the situation, the Chairman, TRAI replied:

"We are currently actually formulating certain amendments to the Act. some time back, they have been formulated and sent by the Authority and it has

come back to us for a re-look. As part of that, we would be considering that issue.

CHAPTER – X

ISSUE OF LICENCES TO THE INELIGIBLE COMPANIES

(A) Audit Observations

10.1 Audit's examination on the allocation of 2G Spectrum revealed that the allegedly favoured Companies were:

- (i) Unitech Infrastructure Pvt. Ltd. (Brand name Uninor)
- (ii) Unitech Builders & Estates Pvt. Ltd. (Brand name Uninor)
- (iii) Azare Properties Ltd (Brand name Uninor)
- (iv) Hudson Properties Pvt. Ltd. (Brand name Uninor)
- (v) Nahan Properties Pvt. Ltd. (Brand name Uninor)
- (vi) Adonis Projects Pvt. Ltd. (Brand name Uninor)
- (vii) Aska Projects Ltd. (Brand name Uninor)
- (viii) Volga Properties Pvt. Ltd. (Brand name Uninor)
- (ix) Shipping Stop Dot Com (India) Private Limited (Now Loop Telecom Pvt. Ltd)
- (x) Allianz Infratech (P) Ltd. (merged with Etisalat DB)
- (xi) Datacom Solutions Pvt. Ltd. (Changed to Videocon Telecommunications Ltd.)
- (xii) S Tel Ltd.
- (xiii) Swan Telecom Private Limited (Now Etisalat DB Telecom India Private Limited)

10.2 According to Audit Observations, out of the above 13 Companies, six newly incorporated applicant Companies namely Unitech Builders & Estates Pvt. Ltd, Hudson Properties Pvt. Ltd, Nahan Properties Pvt. Ltd, Aska Projects Ltd, Volga Properties Pvt. Ltd and Adonis Projects Pvt. Ltd which belonged to Unitech Group having Brand name as Uninor had declared the business activity in the main object clause of Memorandum of Association (MOA) as real estate instead of telecom as the resolution effecting the alteration was not yet registered as on the date of application.

10.3 Further Shipping Stop DoT Com (India) Pvt. Ltd. which later on changed to Loop Telecom Pvt. Ltd. had declared its business activity as to design develop, sell, maintain computer software and programmes.

10.4 The following major deficiencies in the Applications for UAS Licensees were pointed out by Audit.

Table – I

Sr. No.	Name of Applicant Company/Changed name	Date of Incorporation of the Company	Date of application	No. of licenses issued	Major shortcomings observed
1.	Unitech Infrastructure Pvt. Ltd. (Brand name Uninor)	10 August 2007	24.09.2007	1	The business activity in the main object clause of MOA was real estate instead of telecom as the resolution effecting the alteration was not yet registered as on the date of application; Suppressed the non – registration of alteration in the main object clause of MOA by ROC; Authorised share capital was only ` 5 lakh against the requirement of ` 10 crore; Deposited the stamp duties for increase in the authorised share capital on 3 Oct 2007; Registration of the resolution effecting the increase in the authorised share capital was done on 11 October 2007; Submitted false certificate from Company Secretary in respect of Paid up capital;
2.	Unitech Builders & Estates Pvt. Ltd. (Brand name Uninor)	10 August 2007	24.09.2007	1	The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met; Suppressed the conditional registration of alteration in the main object clause of MOA by ROC; Authorised share capital was only ` 5 lakh against the requirement

					of ` 10 crore; Deposited the stamp duties for increase in the authorised share capital on 3 Oct 2007; Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007; Submitted false certificate from Company Secretary in respect of Paid up capital;
3.	Azare Properties Ltd (Brand name Uninor)	1 August 2007	24.09.2007	1	The business activity in the main object clause of MOA was real estate instead of telecom as the resolution effecting the alteration was not yet registered as on the date of application; Suppressed the non – registration of alteration in the main object clause of MOA; Authorised share capital was only ` 5 lakh against the requirement of ` 10 crore; Deposited the stamp duties for increase in the authorised share capital on 3 Oct 2007; Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007; Submitted false certificate from Company Secretary in respect of Paid up capital ;
4.	Hudson Properties Pvt. Ltd. (Brand name Uninor)	1 August 2007	24.09.2007	1	The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met; Suppressed the conditional registration of alteration in the main object clause of MOA by ROC; Authorised share capital was only ` 5 lakh against the requirement of ` 10 crore; Deposited the stamp duties for increase in the authorised share capital on 3 Oct

					2007; Registration of resolution effecting increase in the authorised share capital was done on 8 October 2007; Submitted false certificate from Company Secretary in respect of Paid up capital ;
5.	Nahan Properties Pvt. Ltd. (Brand name Uninor)	16 August 2007	24.09.2007	6	The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met; Suppressed the conditional registration of alteration in the main object clause of MOA by ROC; Authorised share capital was only ` 5 lakh against ` 22 crore; Deposited the stamp duties for increase in the authorised share capital on 3 Oct 2007;Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007; Submitted false certificate from Company Secretary in respect of Paid up capital;
6.	Adonis Projects Pvt. Ltd. (Brand name Uninor)	28 August 2007	24.09.2007	6	The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met; Suppressed the conditional registration of alteration in the main object clause of MOA by ROC; Authorised share capital was only ` 5 lakh against the requirement of ` 26 crore; Deposited the stamp duties for increase in the authorised share capital on 3 Oct 2007; Registration of the

					resolution effecting increase in the authorised share capital was done on 8 October 2007; Submitted false certificate from Company Secretary in respect of Paid up capital;
7.	Aska Projects Ltd. (Brand name Uninor)	16 August 2007	24.09.2007	3	The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met; Suppressed the conditional registration of alteration in the main object clause of MOA by ROC; Authorised share capital was only ` 5 lakh against the requirement of ` 25 crore; Deposited the stamp duties for increase in the authorised share capital on 3 Oct 2007; Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007; Submitted false certificate from Company Secretary in respect of Paid up capital;
8.	Volga Properties Pvt. Ltd. (Brand name Uninor)	1 September 2007	24.09.2007	3	The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met; Suppressed the conditional registration of alteration in the main object clause of MOA by ROC; Authorised share capital was only ` 5 lakh against the requirement of ` 25 crore; Deposited the stamp duties for increase in the authorised share capital on 3 Oct 2007; Registration of the resolution effecting increase in the authorised

					share capital was done on 8 October 2007 Submitted false certificate from Company Secretary in respect of Paid up capital
9.	Shipping Stop Dot Com (India) Private Limited (Now Loop Telecom Pvt. Ltd)	12 March 1997	03/09/2007	21	The business activity in the main object clause of MOA was to design, develop, sell, maintain computer software and programmes as the resolution effecting the alteration was not yet registered as on the date of application; The resolution effecting the alterations in main object clause of the MOA to include the telecom sector was registered by the ROC on 28 September 2007 only; Suppressed the non – registration of alteration in the main object clause of MOA by ROC; Authorised share capital was only ` 5.20 crore against the requirement of ` 128 crore; Deposited the stamp duties for increase in the authorised share capital on 25 Sept. 2007; Request for Registration of increase in the authorised share capital was submitted on 24 October 2007; Submitted false certificate from Company Secretary re. Paid up capital;
10.	Allianz Infratech (P) Ltd. (merged with Etisalat DB)	21 December 2006	5/09/2007	2	The business activity in the main object clause of MOA was real estate instead of telecom as the resolution effecting the alteration was not yet registered as on the date of application; Suppressed the non – registration of alteration in the main object clause of MOA by ROC; Authorised share capital was only ` 5 lakh against the requirement of ` 8 crore; Deposited the stamp duties for increase in the

					authorised share capital on 24 December 2007; Form No 5 along with other papers to increase the authorised share capital was submitted in ROC on 27 December 2007 Submitted false certificate from Company Secretary re. Paid up capital ;
11.	Datacom Solutions Pvt. Ltd. (Changed to Videocon Telecommunications Ltd.)	7 June 2007	28/08/2007	21	Suppressed the non – registration of the resolution effecting alteration in the MOA effecting increase in the authorised share capital by ROC; Authorised share capital was only ` 1 lakh against the requirement of ` 138 crore; Increased authorised share capital on the day preceding the date of submission of application through a resolution; Submitted false certificate re. Paid up capital though the resolution effecting the increase in the authorised share capital and alterations in the MOA/AOA was not yet registered by ROC;
12.	S Tel Ltd.	19 June 2007	07/07/2007	6	Suppressed the non – registration of alteration in the MOA/AOA regarding increase in the authorised share capital Authorised share capital was only ` 10 lakh against the requirement of ` 18 crore as on the date of application; Submitted the form for Registration of the resolution effecting the increase in the authorised share capital on 3 August 2007; Submitted false certificate from Company Secretary re. Paid up capital though the resolution effecting the increase in the authorised share capital and alterations in the MOA/AOA was not yet registered by ROC;

13.	Swan Telecom Private Limited (Now Etisalat DB Telecom Private Limited)	13 July 2006	02/03/2007	13	Suppressed the non – registration of alteration in the MOA/AOA regarding increase in the authorised share capital done on the preceding day i.e. 1 March 2007; Deposited the stamp duties and Form 5 to ROC Mumbai for registering the resolution effecting the increase in the authorised share capital on 14 March 2007; Submitted false certificate from Company Secretary re. Paid up capital; Net worth of ` 314.7 crore claimed on behalf of Reliance Telecom Ltd whose share was claimed to be less than 10%, was not to be included while computing the net-worth of the applicant company.
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a. Misrepresentation of Facts

10.5 Audit during the course of verification of the files of the DoT and public documents accessed from the Ministry of Corporate Affairs, Government of India, New Delhi, found that as many as 85 Licenses out of the 122 new licenses issued to 13 Companies in 2008 were granted to those companies which did not satisfy the eligibility conditions prescribed by the DoT. All 85 licenses were given to companies which did not have the stipulated paid up capital at the time of application. Further, 45 out of these 85 licenses were issued to companies who failed to satisfy conditions of main object clause in their Memorandum of Association.

10.6 Six newly incorporated applicant companies belonging to Unitech Group had suppressed the fact of conditional nature of certification of registration done by the Registrar of Companies (ROC) on 20 September 2007 while registering the alterations in the main object clause in the MOA/AOA of these Companies. The ROC while certifying the alteration of the main object clauses of all six companies had stated that the certificate was subject to the change of name of the Company. Since in terms of Section 21 of the Companies Act 1956, the change of name of the Company could be done only with the approval of the “Central Government signified in writing”, the

condition of the change of name of these applicant Companies was met in May 2008 only. As a result, all these six new companies were registered afresh with the new names in May 2008 by the ROC. Hence the alteration of the MOA of these Companies became effective in May 2008 only. As a result thereof, the MOA of these companies did not permit them to operate in the telecom sector on the date of application i.e. 24 September 2007.

10.7 Apart from this, these six companies had suppressed the fact of conditional certification of the alterations in the MOA/AOA by the ROC while submitting their applications for UAS licence on 24 September 2007. They had also misrepresented the altered MOA/AOA as the original MOA/AOA in their applications before DOT. The submission of the altered MOA/AOA of the Companies without full disclosure of the factual position of the alteration of the main object clause in the MOA/AOA and their conditional registration by the ROC was a fraudulent act of these six companies with the intentions of obtaining the UAS licenses for 20 service areas.

10.8 A few illustrations are:

- (i) Azare Properties Limited and Unitech Infrastructures Private Limited (Brand name Uninor) also misrepresented the altered MOA/AOA as the original MOA/AOA along with their applications to the DoT. Further they suppressed the fact that alterations had not been registered by the ROC as yet on the date of submission of their application. The ROC while certifying the alteration of the main object clauses in the MOA/AOA of these companies on 9th and 5th October 2007 respectively had also directed that the certificate was subject to the change of name of the Company. The directive of the ROC was complied with only in May 2008 and thus the alteration of the MOA of these Companies became effective in May 2008 only. As a result thereof, the MOA of these companies did not permit them to operate in the telecom sector on the date of application i.e. 24 September 2007.
- (ii) Allianz Infratech Private Limited (Merged with Etisalat DB Telecom India Private Limited), in their applications to the DoT on 5 September 2007 submitted the MOA/AOA of the company, which didn't include the telecom sector in their main object clause. Even the alteration in the main object clause of the MOA of the Company was certified by the ROC on 26 October 2007 only. Hence it rendered them ineligible for grant of UAS licence on the date of submission of their application in September 2007.

- (iii) Shipping Stop DoT Com (India) Pvt. Ltd. which later on changed to Loop Telecom Pvt. Ltd. had declared its business activity as to design develop, sell, maintain computer software and programmes. They also submitted their applications for grant of UAS licenses for 21 service areas on 3 September 2007 to the DoT without disclosing the fact of non registration of alteration of the main object clauses in the MOA/AOA with the ROC as on the date of the application. The company had changed the main object clauses in their MOA/AOA so as to include the telecom sector in their MOA/AOA but these alterations were registered by the ROC on 28 September 2007 only. The altered MOA of the Company by the Loop Telecom Private Limited suppressing the fact of non registration of the alterations in the main object clause of their MOA/AOA by the ROC on the date of application was submitted.

b. False and Fictitious claims of higher paid up Capital by 13 Companies.

10.9 DoT (December 2005) had prescribed that the applicant company shall have a minimum paid up equity capital of Rs. 3-10 crore depending on the Service Area(s) (Service Areas A – Rs.10 crore, B- Rs. 5 crore and C – Rs.3 crore) as on the date of the application and shall submit a certificate to this effect by the applicant's Company Secretary along with application.

10.10 13 Applicant Companies, which had applied for 123 UAS licenses and were granted 85 UAS licenses, did not have the requisite authorised share capital on the date of submission of the applications. Of these, eight applicants belonging to Unitech Group (Brand name Uninor) had been incorporated in August-September 2007 with an authorised share capital of ` 5 lakh each. All these eight companies passed the special resolutions for increase in the authorised share capital between 2 PM to 5 PM on 20 September 2007 in the extra-ordinary general meetings of the respective companies and deposited the requisite stamp duties on 3 October 2007 for increase in the authorised share capital. After they submitted the requisite applications along with the proof of payment of stamp duties on 5 October 2007, the certificate of the registration of the increase in the authorised share capital was issued by the ROC only on 8/11 October 2007. The Table –I gives these details of the applications of these companies.

c. Other Issues

10.11 Audit had observed that Swan Telecom Private Limited (changed to Etisalat DB Telecom India Private Limited) applied for grant of UAS licence in 13 service areas in March 2007. From the declaration of the Company for UAS licence, it was evident that at the time of applying for UASL, the equity stakes of Reliance Telecom Ltd in Swan Telecom Private Limited was 10.71%. Since Reliance Telecom Ltd were operating in all the service areas for which Swan Telecom Limited had applied for UASL, the application of Swan Telecom Private Limited was not in conformity with the UASL Guidelines.

10.12 Further, Swan Telecom was given an opportunity to resubmit a revised stake holding pattern in December 2007 i.e. 9 months after their date of application which declared that Reliance Telecom Limited had divested their entire stakes. This was accepted by the DoT and Swan Telecom Private Limited was given the benefit of seniority from the date of their initial application i.e. March 2007.

10.13 Audit also found that the email ID of the corporate as well as registered office of the Swan Telecom Private Limited in their application dated 2 March 2007 was shown as hari.nair@relianceada.com. The same email ID (hari.nair@relianceada.com) also was given for the correspondence address and the authorised contact person of the applicant company. Though the Company Secretary Hari Nair had given a certificate while applying for a UAS licence for J&K Service Area in January 2007 that the Tiger Traders Private Limited held the shares of Swan (then Swan Capital private Limited) as trustees of Indian Telecom Infrastructure fund and these corporate beneficiaries are not part of Reliance ADA Group and neither Shri Anil Ambani nor his family or Reliance ADA Group companies holds any shares in these companies, it was holding NCRPS of Rs.1 at a premium of Rs.999 by the RTL in Swan Telecom, a newly incorporated company with no fixed assets that raised doubts.

10.14 After observing these deficiencies Committee wanted to know whether the Department of Telecommunications took the help of the Company Secretaries/CAs

while examining the applications and what punitive action was taken/proposed against those companies who had suppressed facts, disclosed incomplete information and submitted fictitious documents for getting UAS licences/Spectrum, the Department in their reply have submitted as under:

“For examination of the applications, DoT does not take the help of Company Secretaries/ Chartered Accounts. The Unified Access Services (UAS) licences were granted in terms of the extant UAS Licence Guidelines dated 14.12.2005 and based on certain eligibility criteria specified and validated by the information/ documents/certificates submitted by the applicant companies duly certified by their Company Secretary as mentioned in the Guidelines/ Application Form”.

Based on the Report of Comptroller & Auditor General of India (CAG) on “Issue of Licences and Allocation of 2G Spectrum by the Department of Telecommunications”, DoT, on 14.12.2010 have issued show cause notices to 13 companies for termination of the 85 Unified Access Services (UAS) licences issued in the year 2008, who stated to be ineligible on the date of their respective applications for grant of UAS licences. The companies have submitted their replies which are presently under examination of the Department”.

10.15 On the measures contemplated by DoT to make the verification process foolproof entailing due diligence, fairness and transparency it was submitted as:

“As a matter of abundant precaution, Department of Telecom (DoT) 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”.

10.16 Commenting upon the ineligible Companies, the former CMD, VSNL while deposing before the Committee stated:

“... .. I firmly remain convinced that it is the money which could have come to the Government. SWAN Telecom has not rolled out services even today. Where is the question of bringing in competition? It is only the natural law which is taking the pricing down from the existing competition. It is not due to the new licences. LOOP Telecom, DATA Com. Videocon, etc. are there. Who has started the service? They have only started the service just to say that they have licence and they meet some obligations. So, where is the competition? It was only speculation because something was available and they saw the potential that they can trade in the market. Therefore, the regulation of 2007

was wrongly interpreted. The entire Council, the Prime Minister, the Finance Secretary and the Law Minister were given a go by and not heard, maybe, to benefit the few".

10.17 During the cross examination of the representatives of M/s Etisalat DB Telecom India Pvt. Ltd. the Committee wanted to know how on 10th January, 2008 when LOI was issued and 45 minutes time between 2.45 p.m. and 3.30 p.m. was given to fulfil the requirement of submitting the drafts, a Demand Draft for ` 50 crore, drawn on the Punjab National Bank of Mumbai on the same day could reach Delhi from Mumbai. To this the witness replied:

"About this draft, we will come back tomorrow".

10.18 In a post-evidence information M/s Etisalat DB Telecom India Pvt. Ltd. (earlier known as M/s Swan Telecom Pvt. Ltd.) *vide* their letter dated 15th April, 2011 has replied as under:

"It is a matter of record that most of the applicants had the demand drafts ready and deposited the same on 10th January, 2007 and in most cases much prior to the Company depositing the same.

Further, in relation to the query as to whether the demand drafts for the license fees submitted on 10th January, 2007 were drawn from Punjab National Bank in Mumbai, we have to submit that in fact the demand draft was drawn on the Punjab National Bank in New Delhi, a photocopy of the same is annexed as Annexure-7 hereto".

10.19 On the scrutiny of the said DD the Committee found that though they had questioned about ` 50 crore DD drawn on PNB, Mumbai they were furnished with a copy of Banker's Cheque dated 9.1.2008 drawn on SBI, New Delhi for ` 203.66 crore.

10.20 The deposition of former CMD, VSNL regarding the various issues about the operators *inter-alia* was as:

"Sir, in the case of Swan, the rules were changed. In 2009, it is very clear that you cannot sell your equity, whether it is license or equity".

10.21 On being pointedly told that there was a difference between equity and license, the former CMD, VSNL added:

"Sir, I am aware of it. In the case of Swan, the equity was sold and then the fresh equity was also issued. Then, a reference was made *post facto* whether it is right or wrong. So, the advice of the Company Law Board was taken whether

the issuance of fresh equity is not selling the equity. The issuance of fresh shares is not selling the equity”.

10.22 When the Committee wanted to know the number of Companies who had taken the license, sold their equity and had not sold the license and the attainment of the intended competition, the former CMD, VSNL deposed as under:

They have sold part of the equity, which means losing some control. Then there have been issuance of fresh shares, which later on only the Government clarified that it is permissible because it is not selling the equity. However, I have given a calculation in my response that -- later on because it goes into the shareholders premium account -- one can get bonus shares and then one can issue those bonus shares to cash it or make profits.

And also the question is that the spectrum or the competition which was supposed to have been brought in is not there. Etisalat, there are no customers; Loop, there are no customers; Videocon, there are I think about 30,000 customers; the only two companies which have some customers are Shyam Sistema and Unicorn, about five to six million each. Otherwise, the rest of the licensees have no customers. It is also hurting in yet another way because the spectrum charge which we get is on the AGR (Annual Gross Revenue), and then comes Adjusted Gross Revenue. It is first Annual Gross Revenue and then Adjusted Gross Revenue. Now, the Government is losing the spectrum charge, the Government is losing the licence fees, the Government which should have got service charge, the Government is losing it. There is another set of industry which is wanting that spectrum. Their revenues are far higher and the Government would have benefited. So, the Government today is losing and losing on all counts. First, you sell licence in 2007 at 2001 price despite all economic indicators saying that it is not right. Then, you lose out going forward on the revenue share, on the spectrum charge and on everything else. Then the biggest plank that yes we will bring in more competition. Where is the competition? There is no competition. It is the existing players who are really, really capturing the market”.

10.23 When specifically asked by the Committee that shares of a Company could not be sold within three years as there was a lock in period and how did some companies sell within six months, the former CMD, VSNL deposed as under:

“After all this happened, in the Swan and the Unitech, these are the two classic cases, all the connected ex-post facto approvals were taken. But, yes, the lock in period, the roll out obligations, etc. were there. In the recommendations of the TRAI in 2007 and even previously, they were there. But they were all given a go-by, because selling of shares was treated differently from the issuance of fresh equity. The question is that despite so many letters, simple indexation, they did not do”.

10.24 Elaborating on the above issue and clarifying about the disposal of applications the former CMD, VSNL *inter-alia* stated as under:

“Some of the applications are not yet disposed. Those which were disposed were up to 25th of September.

The question here is, the Minister says that there was no cap but he had already applied a cap and that is the matter which was taken by the High Court and has been treated as vulnerable arbitrary application. That has also been upheld by the Supreme Court.

On 2nd November, 2007 the response was from the Minister that this was no cap but the cap had been applied. There are two letters and the response went to the Prime Minister the same day”.

B. Representations of some Companies against the Audit findings

10.25 M/s Etisalat DB Telecom India Private Limited, vide letter dated 18.11.2010, to Hon’ble Prime Minister had submitted their views on the findings/observations made in the said CAG Report on following paras:

- “(a) Clarification on Para no. 4.7.3 of the CAG Report regarding alteration of MOA with respect to Telecom activity as part of main object clause and amendment in MAA with respect to authorized share capital, after the date of application.
- (b) Clarification on Para no. 4.7.4.6 of CAG Report regarding violation of substantial equity clause by M/s Reliance Telecom Ltd., on the date of application.
- (c) Clarification on Para no. 4.7.4.6.2 of CAG Report regarding counting of networth of M/s Reliance Telecom Ltd., for grant of UAS licenses to Swan Telecom Pvt. Ltd”.

DoT in their comments to the above have stated as under:

- “(a) Based on the said CAG report, show cause notices have been issued to M/s. Etisalat DB Telecom India Pvt. Ltd. for termination of the Unified Access Services (UAS) licences issued in the year 2008. Reply of the company is awaited for further action in the matter. Therefore, at this juncture, DoT is not in a position to comment on the representation of the company.
- (b) The comments from Ministry of Corporate Affairs have been received in the matter. *Vide* their OM No. 3/92/2010/CL-II dated 24th December, 2010 & 21st December, 2010.
- (c) As per the certificate submitted by M/s Swan Telecom Pvt. Ltd., the networth of M/s Swan Telecom Pvt. Ltd itself was (` 1100.28 crore) more than the required networth of ` 1030 crore for grant of 13 UAS licences to the company. Therefore, the networth of M/s. Reliance Telecom Ltd. was

not taken into consideration while granting UAS licences to the M/s. Swan Telecom Pvt. Ltd”.

10.26 M/s Reliance Communication Ltd. vide letters dated 26.11.2010 had submitted their views on the findings/observations made in the CAG Report on following issues:

- (i) Clarification on the C&AG’s observations on increase in the authorized share capital of Swan Telecom Pvt. Ltd. in March 2007.
- (ii) Clarification on the C&AG’s observations regarding non fulfillment of the requirement of net worth by Swan Telecom Pvt. Ltd. on the date of application.
- (iii) Clarification on the C&AG’s observations regarding holding of substantial equity by Reliance Telecom Ltd. in Swan Telecom Ltd. on the date of application.
- (iv) Clarification on the C&AG’s observations to term Swan Telecom Ltd., as a front company of TRL”.

10.27 The comments of DoT in this regard are as under:

“The issues raised by M/s Reliance Communications Ltd. are linked to grant of UAS licences to M/s Etisalat DB Telecom India Pvt. Ltd. (formerly Swan Telecom Pvt. Ltd.), were on the date of application (02.03.2007), M/s. Reliance Telecom Ltd. was having some equity stake in M/s. Swan Telecom Pvt. Ltd. As stated earlier, based on the said CAG report, show cause notices have been issued to M/s. Etisalat DB Telecom India Pvt. Ltd. for termination of the Unified Access Services (UAS) licences issued in the year 2008. Reply of M/s Etisalat DB Telecom India Pvt. Ltd. is awaited for further action in the matter. Therefore, at this juncture, DoT is not in a position to comment on the representation of M/s. Reliance Communications Ltd.

As per the certificate submitted by M/s Swan Telecom Pvt. Ltd., the networth of M/s. Swan Telecom Pvt. Ltd. itself was (` 1100.28 crore) more than the required networth of ` 1030 crore for grant of 13 UAS licences to the company. Therefore, the networth of M/s. Reliance Telecom Ltd. was not taken into consideration while granting UAS Licences to the M/s. Swan Telecom Pvt. Ltd. The comments from Ministry of Corporate Affairs have been received in the matter”.

10.28 To a query about the role of Reliance Communication in the formation of Swan Telecom, the Chairman, Reliance Communications Ltd. in his written submission has stated as:

“With respect to the formation of Swan Telecom, it is to confirm that the company under the name Swan Capital Private Limited was incorporated only on 13th July 2006, which was changed to Swan Telecom on 15th February, 2007. The shareholders on the date of incorporation of the company i.e.13th July 2006 were as under:

Shareholder	Equity share of Rs. 10 each
Power Surfer Interactive (India) Pvt. Ltd.	4,999
Reliance Energy Management Services Pvt. Ltd	5,000
Himanshu Agarwal	1
Total	10,000

These shareholders sold their entire shareholding in Swan Telecom to Tiger Trustees Private Limited (formerly known as Tiger Traders Private Limited). In this manner, Tiger Trustees Private Limited became 100% owner of Swan Telecom on that date. Swan Telecom also issued 30,00,000 fresh equity shares on 22nd January 2007, of which 27, 03,000 equity shares were issued to Tiger Trustees Privates Limited and 2,97,000 equity shares were issued to Reliance Telecom Limited”.

10.31 In a post evidence reply made to the Committee on the allegation regarding business activity in the main object clause of MOA as pointed out in the Audit Report, M/s Unitech Wireless (Tamil Nadu) Pvt. Ltd. have stated that as per the UASL guidelines there was no requirement to have telecom activity as part of the MOA at the time of applying for licence. Further, DoT letter dated 1012.2007 for the first time stipulated submission of a certificate to the effect that telecom activity/business was a part of the objects for which the company was established according to its MOA and AOA.

10.32 On the issue of Paid-up Capital, M/s Unitech Wireless (Tamil Nadu) Pvt. Ltd. in their submission made to the Committee have stated that the ROC does not issue any certificate recording the increase in the authorized share capital and further added as:

"We are not aware whether there is any recordal dated 8.10.2007/11.10.2007 as alleged in the CAG Report. increase in authorized capital is effective as soon as the shareholders' resolution is passed and that too, from the date of such resolution and it does not require an affirmation or recordal by the RoC to bring it into effect".

C. Other Clarifications from the DoT/Ministry of Corporate Affairs.

10.33 On being specifically asked as to how the Department proposed to fix responsibility on the Officers who failed to enforce to the basic eligibility conditions of the Companies that were granted licence/Spectrum causing huge loss to the Exchequer, it has been submitted as under:

“Various agencies are investigating the matter. Any official found to have been negligent in discharging his duties or in collusion with companies in perpetrating fraud/misrepresentation by the companies, then suitable action will be taken as per rule”.

10.34 The Committee while scrutinizing the subject found that the Ministry of Communications & Information Technology in their internal notings had raised the issue of issuance of licence to M/s Swan Telecom Pvt. Ltd. and a reference was also drawn to a stand taken in a similar case. Para 3 of the Ministry note dated 12.02.2009 states as under:

“In a similar instance where a complaint had been received by this department in respect of grant of UAS Licence to M/s. Loop Telecom Pvt. Ltd. regarding alleged violation of the substantial equity clause 8 of UAS Guidelines by M/s. Loop Telecom Pvt. Ltd. under a Corporate veil, the reference has been sent to Ministry of Corporate Affairs (*vide* letter dated 05.08.08 at 3/c) for examination wherein it is informed by the Ministry of Corporate Affairs that they are examining the matter”.

Further the said note that was put up also stated as:

“In view of above, Ministry of Corporate Affairs may be requested to examine the matter and comment whether the clause 8 of UASL guidelines dated 14.12.2005 regarding ‘substantial equity’ have been violated under any corporate veil as per DFA at 5/c please”.

10.35 However, the file notings about the decision taken by the Minister shows:

“Discussed with Secretary(T) with DDG (AS-I) legal advice may be obtained”.

10.36 The DDG (AS-I) in his note dated 5.02.2009 had stated as under:

“The matter was discussed with Secretary(T) in the presence of Member(T) and separately in a meeting with Member(T) and LA(T). The issue of alleged violation of substantial equity clause i.e. clause 8 of UAS licence guidelines dated 14.12.2005 by M/s Swan Telecom Pvt. Ltd. as on date of their applications for grant of UAS licenses, has been raised by Dr. Arvind Gupta in his Writ Petition (Civil) No. 7815 of 2008 before Hon’ble High court of Delhi in the matter of Dr. Arvind Gupta V/s Union of India. Learned Solicitor General of India along with Shri Vikas Singh, Sr. Advocate (former ASG of India) and Shri Sanjay Hegde, Advocate are defending the case of behalf of Union of India in the High Court of Delhi. Since the matter is subjudice in the Hon’ble High Court of Delhi, it is desirable that we may seek opinion of Learned Solicitor General of India in this case for further action to be taken by DoT”.

10.37 The Secretary(T) noted in the file that “Through the Ministry of Law we may refer the matter to SG”. The Minister of Communications and Information Technology

directed that “May be sent to SG directly since the cases are represented by him before the TDST and other Judicial Forums including HC Delhi”.

10.38 Solicitor General of India in his opinion dated 24/25 March, 2009 concluding that the applicants fulfilled all the necessary conditions cannot really be faulted *inter-alia* as under:

“Be that as it may, by a communication dated 12 December 2007, M/s Swan Telecom Pvt. Ltd. gave all the necessary clarifications, submitting point-wise clarifications/information/supporting documents. All the documents were thereafter processed. The fact that Reliance Telecom Limited was no longer involved with the applicant was specifically noted. The consideration is quite extensive and detailed. Finally the Secretary noted, on 9 January, 2008, that they fulfilled all the requisite conditions and LOI may be approved. This was approved by the Hon’ble Minister on 9 January 2008.

In the circumstances, my opinion is sought as to whether this matter should be referred to the Department of Company Affairs. Whether the application as originally filed was in order or not was the subject matter of divergent opinions and a view had already been taken that if regard be given to the equity share capital in the company, the application could not be said to be in violation of Clause 8. In any case, before the company was asked to issue clarifications, on its own the applicant gave full particulars of the shareholding *vide* the said letter dated 7 December, 2007. It also submitted further clarifications on 12 December 2007. The file shows that there has been a full consideration of all relevant material and the conclusion that the applicants fulfilled all the necessary conditions cannot really be faulted.

10.39 However, the DoT in their notes dated 30.03.2009 and 1.4.2009 while seeking permission to refer the matter to the Ministry of Corporate Affairs for investigation had putforth as under:

“Draft at 5/c has been examined with reference to the date of submission of applications for grant of UAS Licences by M/s Swan Telecom Ltd. The applications were submitted on 23.01.2007 and 02.03.2007. The details of share holding pattern was as mentioned in the draft at 5/c. The same can be referred to Ministry of Corporate Affairs for investigation”.

10.40 The DDG (AS-I) in his self-contained note dated 9.04.2009 putforth the following:

“In view of the facts detailed in para 1 above and the legal opinion of Ld. S.G. in para 2 above, vide note 9-10N, the matter was submitted for decision whether the said allegations, with regard to violation of clause 8 of UAS guidelines dated 14.12.2005 by M/s Swan Telecom Pvt. Ltd. on the date of application(s) under any corporate veil, need examination by Ministry of Corporate Affairs and consideration of DFA at 5/c. At 10/N, DDG(AS-I) noted that administrative

decision on above may be taken in view of opinion of Ld. SG on 6-8/N. At 11/N, the draft at 5/c was examined by the Finance Branch wherein Member(F) noted that Draft at 5/c on the subject may be referred to Ministry of Corporate Affairs for investigation. At 11/N, Secretary(T) directed for a self contained Note based on SG's opinion for MOC".

10.41 Reproducing the opinion of Ld. SG (*vide* his notes dated 25.03.2009) in the subsequent para, the DDG(AS-I) submitted for consideration and administrative decision whether a reference was needed to be made to MoCA. To this, the Secretary (T) in his notings dated 17.04.2009 states that in view of the opinion of SG no such reference was required. The proposal was approved by the Minister on 18.04.2009.

10.42 When the Committee sought to know the opinion of Attorney General for India regarding whether the matter of alleged violation of substantial equity clause by M/s Swan should have been referred to the Department of Company Affairs, he has opined as follows:

"Since the matter was subjudice and since the license had been issued over a year ago, I was of the opinion that at that stage it was not necessary to make any further reference to the Ministry of Company Affairs since according to the Department there had been full and exhaustive considerations of the facts of the case. I was not called upon to opine as to whether the application of Swan Telecom was proper or what the shareholding of Swan was. I have never "cleared" the application of Swan".

10.43 On being specifically asked as to why it was not considered appropriate to refer the case to Ministry of Company Affairs despite notes from DoT clearly brining out reasons for the same, he in his written submission has stated as:

"The issue raised before me did not relate to the alleged violation of the substantial equity clause".

10.44 To a pointed query about his opinion on the eligibility of the said Company, he has submitted as under:

"No. The opinion was on the aspect of future course of action in view of the pending litigation".

D. TRAI's recommendations of November, 2010 for cancellation of the licences of some companies.

10.45 TRAI in their letter to DoT in November, 2010 had stated that in pursuance of section 11(1)(b)(i) of the TRAI Act 1997 (as amended), TRAI had sought compliance

of licence terms and conditions pertaining to roll out obligations, from all the Service Providers who had been issued licenses from December, 2006 onwards.

10.46 TRAI had analysed the reports submitted by the licensees and found that while some licensees had complied with the roll out obligations, there were 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 of compliance).

10.47 TRAI categorized them as follows:

Category	Subject	1	2
A	Licensees who complied with the roll out obligations	Satisfactory	Not Satisfactory
B	But with delay upto 52 weeks	Satisfactory	Not Satisfactory
C	But with delay involving more than 52 weeks	Satisfactory	Not Satisfactory
D	Licensees who have not complied with the roll out obligation	Period of 52 weeks from the due date of compliance had not yet expired	Period of 52 weeks from the due date of compliance has expired or service has not been started even though registration has been with the TERM cell.

10.48 TRAI quoting clause 35 of the licence conditions which provided for imposition of Liquidated Damages/Cancellation in case of delay/non-compliance of rollout obligations requested DoT to take immediate necessary action as follows:

- "(i) Category A2-Cancellation of licenses needs to be seriously considered in view of non-utilisation of spectrum and resultant loss of revenue to exchequer. This may however require legal examination.
- (ii) Category B2-Liquidated damages may be imposed as per licence conditions. Besides, Cancellation of licenses needs to be seriously considered in view of non-utilisation of spectrum and resultant loss of revenue to exchequer. This may however require legal examination.
- (iii) Categories C2 and D2-Licenses may be cancelled as per licence conditions in addition to levy of liquidated damages".

10.49 When the Committee enquired if the Department had issued show cause notices to the ineligible Companies/the Companies who failed to meet their roll out obligations, after getting UAS licenses/2G Spectrum in January, 2008, for cancellation of their licenses, the Department of Telecommunication have replied as:

“Show cause notices for termination of UAS licenses due to violation of rollout obligation conditions have been issued to M/s Etisalat DB Telecom India Private Ltd. for Delhi & Mumbai service areas and M/s Siestema Shyam for Kerala, West Bengal and Assam service areas. Four more cases are under process of approval for issuing the show cause notices to licensees who got UAS license in January 2008, for termination of licenses due to violation of rollout obligation conditions. Action in respect of other similarly placed cases is being taken on the same lines”.

10.50 The Committee had sought to know why DoT on its own had not taken any action against the defaulting operators when all the operators were required to submit primary data on roll out obligations to DoT first and this information was subsequently sent to TRAI. To this DoT replied as:

"Regarding submission of information, UAS license condition number 9.1 prescribes, 'The LICENSEE shall furnish to the Licensor/TRAI, on demand in the manner and as per the time frames such documents, accounts, estimates, returns, reports or other information in accordance with the rules/ orders as may be prescribed from time to time. The LICENSEE shall also submit information to TRAI as per any order or direction or regulation issued from time to time under the provisions of TRAI Act, 1997 or an amended or modified statute'. However, there is no specific provision in the UAS license agreement regarding data/ information to be submitted to DoT first or vice-versa. Action is being initiated for imposition of liquidated damages”.

E. S Tel's withdrawal of the case against DoT.

10.51 S-Tel had sought quashing of the Press Release dated 10.01.2008 which had deprived them from being granted LOIs for UAS Licences for 16 circles for which they had applied after 25.09.2007. On 1.07.2009 a Single Judge dismissed the case in S-Tel's favour. DoT's appeal against this judgment before a division bench in the High Court of Delhi was dismissed again in S-Tel's favour. Then DoT filed an appeal in the Hon'ble Supreme Court. When the Committee sought to know about the developments in the matter, the Director on Board, S-Tel Pvt. Ltd deposited as under:

“If I can submit, we did not withdraw our offer. What happened was that we only told the Supreme Court not to pursue with the case. As you might recollect, the case was filed by us at the High Court but the judgement was reserved for more than 9 to 10 months.

Subsequently, when the judgement was given, it was the DoT which went on appeal to a Delhi High Court Bench. The High Court Bench also confirmed the original judgement of the single judge judgement. Subsequently, the Government decided to go for an appeal to the Supreme Court. So, at that time, we decided that we should not pursue with this case and, therefore, we said that we are not pursuing”.

10.52 On being further queried as to why such an action was taken, the Director on Board, S-Tel Pvt. Ltd. deposed as under:

“Actually, by that time, 2 ½ to 3 years had already elapsed and all our assumptions had gone totally awry. The most important thing in this industry is, you should get food when you are hungry. Now the spectrum is the most important thing here. If you do not get spectrum ahead of others or at least along with others, there is no use. In the last three years all other operators have got spectrum and they have rolled out their services. The total number of subscribers attractable is limited. The time to market is a very important phenomenon. In these three years, many operators had already come in, 12 to 13 operators were in the market, most of the subscribers were already grabbed by other operators and the most important thing, the single key performance parameter in this business is Average Revenue Per User (ARPU). So, the ARPU which was supposed to be at ` 250 had come down to a level of ` 160 and today it is not even ` 90. So, when such a reduction took place, we found that the economic viability is to be revisited. What we said was, in our affidavit that we filed, we clearly told the court that we want to have the flexibility to choose the circles as and when they are given to us, wherever it makes economic sense, we will enter. That is what we informed the court”.

10.53 When the Committee pointed out that, the DoT approached Supreme Court through an SLP to quash the High Court verdict at which stage the Janata Party President Subramaniam Swamy requested for his impleadment and sensing danger, Raja wanted S Tel to withdraw from the case. On March 5 2010, Friday evening, after office hours, DoT issues an order asking S Tel to close its operation in three States citing security reasons. The reply of S.Tel, Director was:

“Yes, Sir. We received a letter regarding the cancellation of the commercial launch”.

10.54 The Committee further quoted news reports as:

“There was no show cause issued to S Tel before that and later Home Ministry revealed that they never raised any security concern. Arm twisted S Tel surrendered before Raja on March 8th, on Monday and declared that they have no troubles with DoT policy. Vahanvati produces S Tel’s surrender letter to Supreme Court which was rejected and directed the company to file an affidavit. Due to Subramanian Swamy’s presence Raja’s design failed and court

said that they will not interfere into the High Court order declaring the change of cut off date as illegal".

When asked if this was true, the Director replied as under:

"Correct, Sir".

10.55 On being asked to explain as to what happened later, the Director, S-Tel stated as under:

"As you have correctly pointed out, we had filed the reply to the DoT. But we filed an affidavit with the Supreme Court in which we said because of changed circumstances in the business which is very much the same as what we told the DoT in our letter, we would like to have the choice to choose the circles as and when we want. Therefore we are not proceeding with this particular case".

10.56 During the course of deposition before the Committee the Director S-Tel submitted that:

"We received a letter on 5th March saying that the commercial launch approval given has been withdrawn. So, we immediately ran to the DoT Secretary and then we submitted an application saying we have not done anything and we would be very happy to comply with the requirements".

10.57 Elaborating about the contents of that letter dated 5th March, 2010, the Director S-Tel stated as under:

"The letter said: 'The approval for launch of commercial services under reference is hereby withdrawn till further orders in the interest of national security'".

10.58 DoT on 6/7/2010 had sought the advice of the Ministry of Law & Justice regarding cancellation of 2G Spectrum allotment made to some telecom service providers. In this connection, the Department of Legal Affairs *inter-alia* clarifying the matter referred to them, stated as under:

"Important fact of this case is the statement made by M/s S.Tel on affidavit stating the decision of the Government for giving UASL licenses to those who applied up to 25.9.2007 was not arbitrary but based on likely availability of spectrum and administrative decisions thereon. If observations of the Supreme Court and statement made by M/s S. Tel before the said Hon'ble Court are read together it may be concluded that there was no allegation on the part of S.Tel Ltd., that the DoT has been arbitrary in granting UASL licenses and there is no substance in Dr. Subramanian Swamy's allegation that 2G allotment was arbitrary or grossly unfair".

F. Utilisation of BSNL's infrastructure by Swan.

10.59 BSNL signed a Memorandum of Understanding (MOU) with M/s Swan on 13.10.2008. The clause No. 3.2 of the MOU (Annexure-I) states "Various terms and conditions for provision of Intra-Circle Roaming arrangement to SWAN'S GSM subscribers in the BSNL's GSM network will be as per Annexure-II forming part of this MOU".

10.60 Regarding the issue of M/s Swan Telecom Pvt. Ltd. signing on MoU with BSNL on 13th October, 2008 to use the infrastructure facilities of BSNL the former CMD, VSNL deposed as under:

"Any response I give relating to Swan/Etisalat could be misconstrued. BSNL has not allowed up until that point and even today roaming on their network or sharing of the infrastructure. Swan was the first company which signed a roaming agreement with BSNL because they could just create some capacity in three or four towns and they could issue any number of SIMS. When they have a roaming capability availability from BSNL, they can use their network. Up until then, BSNL did not allow any roaming on this network to any private operator. The first one was Swan".

10.61 On being asked as to why special treatment was given to Swan, he put it as:

"Swan is special, Sir"

10.62 When the Committee asked DoT the circumstances that led to BSNL permitting a Private Company to share its infrastructure and the sum that the BSNL charged for the purpose the Ministry have replied as under:

"From the different clauses of the MoU including the aforesaid terms and conditions for provisioning of intra-circle roaming arrangement with SWAN (part of MoU at Annexure-II), it is clear that there were adequate provisions for charging arrangement in respect of Intra Circle roaming between BSNL & SWAN and the interest of BSNL was fully protected.

BSNL did not have any free arrangement with M/s SWAN but had well defined charging arrangement like usage charges including 52 paise per minute (or part thereof) to begin with and to be reviewed as per above clauses. In addition, Inter-connection usage charge including NLD/ILD charges, termination charges, transit charges and Data Clearing House charges were to be borne & paid by the roaming Partner. Amount of additional charges towards spectrum, license fee, other taxes paid by BSNL on account of Intra-circle roaming charge revenue, one-time set up cost on actual basis was also to be borne by the

Roaming Partner. Charges for other services like SMS, MMS, GPRS VAS etc., if availed by the Roaming Partner through BSNL's network, were to be determined and prescribed separately. The statement in the Pioneer is thus factually in-correct".

10.63 Further probing into the matter, the Committee sought payment details in respect of the above mentioned charges alongwith relevant Annual Gross Revenue (AGR) statements filed by Swan/Etisalat, Quarterly/Annually reflecting the same. To this, DoT in their reply dated 18.04.2011 have submitted as:

"BSNL had entered into only an MOU recognizing only general basis of cooperative and mutually beneficial working arrangements and no roaming or any other arrangement had been implemented. No LSA-wise agreement had been signed, no resources had been shared, no facility had been extended in any manner and also no payment or any financial transaction had taken place between either of the organizations on account of intra-circle roaming arrangement. It is only after the availability of shareable capacities in BSNL network in different LSAs that LSA-wise agreements were to be signed with prospective private operators in the respective LSAs where separable capacities become available and where intra-circle and other arrangements were considered feasible, mutually beneficial and in the interest of BSNL after working out complete technical and commercial details. In view of non-implementation, as stated above, no claims were applicable and no charges were levied and collected".

10.64 On being specifically asked if BSNL had entered into arrangement with any other Telecom Operators on similar conditions, DoT has replied as:

"The arrangement was entered into only with M/s Swan Telecom Limited, to start with, and it was on non-exclusive basis. There were many technical issues to be addressed, as it was for the first time that such an arrangement was being conceived. LSA-wise agreements were to be signed only after meeting various conditions like availability of separable capacities in the circles and resolving of various technical, security and commercial issues etc".

10.65 To other queries of the Committee as to whether any revision was carried out subsequent to MoU and if BSNL had reviewed the arrangement it had with Swan once it was taken over by Etisalat, DoT have replied as:

"Since no LSA-wise agreement was signed, no revision was applicable. BSNL would have reviewed the arrangement at the time of signing LSA-wise agreement but as no agreement was signed, no review was needed".

CHAPTER - XI

PRESUMPTIVE LOSS

11.1 There were lots of allegations of huge losses in the allocation of UAS license/2G Spectrum in 2007-08 at a price determined in 2001. Shri Subramanian Swamy in his petition before the Delhi High Court in May, 2010 had underlined that there was a total loss of Rs.97,410.74 on three counts viz. value of new 2G license, value of cross over licences and value of extra Spectrum as per the details given below:

Table 1: Value of New 2G Licenses

Sl. No	Name	Number of Circles	Amount paid (Rs. Crore)	Market Value (Rs. Crore)	Difference (Rs.Crore)
1	Unitech Wirelss Ltd.	22	1651	10731.5	9080.5
2	Swan Telecom	14	1537.01	9990.565	8453.555
3	Datacom Solutions	22	1651	10731.5	9080.5
4	S Tel	22	1651	10731.5	9080.5
5	Shyam Telelink	22	1651	10731.5	9080.5
6	Loop Telecom	21	1454.91	9456.915	8002.005
7	Spice	4	484.17	3147.105	2662.935
8	Idea Cellular Ltd.	7	683.59	4443.335	3759.745
9	Tata Teleservices	3	9	58.5	49.5
	Total		10,772.68	70,022.42	59,249.74

Note:

1. Market Value is assumed 6.5 times the license fees based on sale of shared by Unitech and Swan Telecom
2. Unitech Wireless has applied for license in the names of – Unitech Infrastructures Pvt. Ltd., Unitech Builders & Estates Pvt. Ltd., Aska projects Ltd., Nahan Properties Pvt. Ltd., Hudson Properties Ltd., Volga Properties Pvt Ltd., Adonis Projects Pvt. Ltd., Azare Properties Ltd.

Table 2: Value of Crossover Licenses

Sl. No	Name	Number of Circles	Amount paid (Rs. Crore)	Market Value (Rs. Crore)	Difference (Rs.Crore)
1	Reliance Communications Ltd.	22	1651	10731.5	9080.5

2	Tata Teleservices Ltd.	22	1651	10731.5	9080.5
	Total		3,302	21,463	18,161

Table 3: Value of Extra Spectrum

Sl. No	Name	Amount paid (Rs. Crore)	Difference (Rs. Crore)
1	Bharti	Additional 1% of Revenue	10,000
2	Vodafone	Additional 1% of Revenue	8500
3	Idea	Additional 1% of Revenue	1500
	Total		20,000

11.2 Shri B.K. Syngal, while deposing before the Committee, submitted:

"If we have to go by what we discovered in 2010, the possible loss could be even higher, but even if we are to go by the valuations at which the licences have been treated or sold, it is on an average Rs.70,000 crore or Rs.80,000 crore. It is now a matter of conjecture".

11.3 Asked to elaborate, Shri Syngal explained in a written note as follows:

"One has to look at various indicators to decide and arrive at the true potential of a resource, most importantly if there is an element of finiteness'. It may be of interest to the Committee that the Indian Telecom market was capitalized at around US\$200 to 250 billion in 2007-08.

"First, the Hutch-Vodafone deal is sufficient proof of Spectrum's true economic and opportunity value discovery. Vodafone valued the company at around US \$22 billion and paid a discounted price of \$10.9 billion in cash for acquiring the 52 percent stake held by Hutchison Telecom International (HTIL) in Indian mobile firm Hutch-Essar to complete a deal that gives it access to one of the fastest growing mobile markets by acquiring Hutch, when a pan-India license with Spectrum costing around Rs. 1658 crores was hawked, that is the cost of the Spectrum and assets. The questions posed were that an auction would cause end consumer tariff to go up and deferred revenue share is more beneficial than upfront payments of Spectrum etc. The counter question I posed is "have the tariffs gone up post this deal?" the answer is resounding NO. We must not use sale of assets for revenue generation etc.

"Second, in US the government earned US \$ 34 billion by sale of Spectrum in 2006-08. The proceeds were to be used for re-farming of Spectrum from old technologies to new technologies to accrue digital dividends.

"Third, please also note that the telecom bell weather Bharti was quoted at around rupees 50/- per share in 2002 and was at around 1000/- share in 2008, 20 times, whilst entry fee for a license with Spectrum was at around rupees 1700 crores then (see attached). Should not the price of license, not have moved with the share price of the company, as was also demonstrated by the Vodafone deal?

"Fourth, should not have the government applies the least cumbersome method of indexation of the price discovery in 2001 by just using the Prime Lending Rate (PLR) or inflation index of say 12 percent? This in itself would have resulted in a price of Rupees 3,665 crore and at 15 percent 4410 crore, as also suggested by then Finance Secretary Dr. D. Subbarao (page 93 Para 2 of his letter), adding further to stay the process.

"Fifth, the number of total subscribers was around 5 million at end March 2001 and 261 million at end March 2008 (attach 4). The cost of Spectrum per sub, at Rupees 1658 crore per license, in 2001 at simple Mortgage calculation would result in Rupees 34/- subscriber vis-à-vis Paise 65 when Spectrum was doled at 2001 in 2008. However, if the total cost for 4 licenses is taken, the figures would be Rupees 136/- and Rupees 2.60/- sub respectively.

"Sixth, as late as may this year the TRAI has recommended linkage of excess 2G Spectrum to the 3G price discovery in their latest recommendations of 11th May 2010 (clauses 6.55 and 6.56 of Chapter VI, attach 5). Earlier to that a duly constituted committee of the DoT, called the Subodh Kumar Committee, I was asked to look into the Spectrum pricing of the 2G Spectrum beyond 6.2 MHz for the old licensees (2001) and beyond 4.4 MHz for the new licenses (2008). The Committee recommended that Spectrum beyond these limits will be linked to the 3G price discovery".

11.4 When the Committee asked as to whether the loss to the Government was presumptive or there was any basis of the loss to the Government, Shri Syngal submitted in evidence:

"I have given four or five indicators. One was the Hutch-Vodafone deal which was valued at 22 billion dollars and Vodafone paid 11 billion dollars for 52 or 57 per cent depending upon which way it is counted, for entering the Indian market. The market size is of relevance. It was five millions when the cost of the spectrum and license was Rs.1,658 core. Now if we take the cost of the spectrum for the delivery of the service at that time, it is not a first-mover advantage; it is a first-mover disadvantage to create awareness in the market of the service and also to have picked spectrum at an expensive cost in 2001. That is the rationale of saying as to whether the late entrant benefits or does not.

"Let me also now explain it a little bit further. Today, the additions are about 12 million to 15 million customers per month, which means the cost of the spectrum is getting amortised and it is getting amortised at a much lower rate because you have distributed the spectrum at Rs.1,658 crore only. As a matter of fact, in my calculation, I have also given that if we multiply Rs.1,658 crore with 4, the cost comes to Rs.7000 crore and the number of customers then was 5 millions only – I am aware of that fact- and today one is giving out licences at the same Rs.7,000 crore when additions are what the market was in 2001. So, the question was whether there are any economic indicators in 2007 which should have created awareness within the Government that what is being done is right or wrong according to a market economy".

11.5 The Committee, then, desired to know from the Ministry of Finance as to whether they had made any assessment of the loss. In reply, the Finance Secretary stated in evidence:

".....on the point that you mentioned whether there is any loss which has accrued to the exchequer in allocating spectrum in the manner in which it has been allocated, we have not made any assessment of the notional or alleged loss of revenue. The view is that it is difficult to assess this on account of various reasons. One is that the spectrum allocated for 3G services is in 2.1 GHz band. We are told by the technology people that the two sets of bands are dissimilar in propagation characteristics and value parameters.

"Secondly, the respective contexts in which the allocations were made for 2G and 3G bands are also perhaps different. The initial allocations of spectrum in the 2G bands were made at various points in time starting from 1994 and therefore the issue of historical legacy is perhaps an issue which comes in when there is fresh allocation in these bands.

"We are also told that the volume of un-allocated spectrum available in these bands is relatively very thin and therefore there could be a problem of efficiency in price signaling and discovery. As compared to this, the auction for 3G which has just concluded and which has given the kind of revenues which I referred to has taken place on a clean slate without any such previous historical sweep and consideration.

"Apart from this, our Department is largely connected with the policy formulation aspects relating to allocation of spectrum and the broad approach, as I mentioned in the beginning of my statement, has been that we are all for allocating spectrum in a rational manner, in a manner which discovers the price clearly and openly. But I do not have, at this stage, any assessment of the notional loss because it is difficult to work it out".

11.6 Asked to state categorically whether there was any loss to the Government or not, the Finance Secretary submitted:

"Sir, what I said in my statement before the hon'ble Committee is that it is difficult to draw a backward conclusion from 3G Spectrum. But a scare resource, as the market expands, always commands a premium".

11.7 The CBI, in its FIR registered on 21st October. 2009 estimated a loss of Rs.22,000 crore to the exchequer on account of UAS licences given in 2008 at a price determined in 2001. In this context, when the Committee desired to know the basis on which the CBI had arrived at the figure of Rs.22,000 crore, the Investigating Agency replied that the figure of Rs.22,000 crore loss reflected in the CBI FIR no.RC DAI 2009 A 0045 dated 21.10.2009 was based on source information. This figure was arrived at based on the following premises:-

- (i) That M/s. Swan Telecom got 13 licences for Rs.1537 Crores and sold it in entirety for Rs.4200 Crores, thus making a profit of Rs.2663 Crores.
- (ii) That M/s. Unitech got 22 licences for Rs.1658 Crores and sold it for Rs.6100 Crores, thus making a profit of Rs.4442 Crores.
- (iii) Both companies taken together made a profit of Rs.7105 Crores for 35 licences.
- (iv) This was taken to calculate average profit for each licence i.e. $7105 / 35 = 203$ Crores. This was multiplied by 122 (total of licences issued in Jan, 2008) to calculate profit to companies which got licences in Jan. 2008, giving a figure of Rs.24,766 Crores. However, the source information referred to several smaller value circles (about 14-15) licences as well, thereby reducing margin of profit to Rs.22,000 Crores. It is to thrust the point that there was very little information at the time of registration of the case and the figure of Rs.22,000 Crores profit to applicant companies and corresponding loss to the public exchequer is based on source information with little access to records".

11.8 The Committee then asked about the reasons for subsequent upward revision of the loss by the CBI to an amount of Rs.50,000 cr. The Director, CBI submitted in evidence:

"....we had asked the TRAI, who have set up an expert Committee to give us what should have been the correct prices for 2008. They have not done that but they have come out with the prices for 2010, what the price for spectrum for 2010 should have been which they have calculated was six times what it was sold for in 2008. That means, Rs.1568 crore multiplied by six. So we are calculating that even if it was five times, because six was in 2010, so if it was five times in 2008, we come to a figure of Rs.50,000 crore roughly. This was the basis of our calculation".

11.9 Shri Sitaram Yechury, M.P. in his letter dated 31st May, 2010 to the Prime Minister had *inter-alia* stated that the 3G auction had established the market price of spectrum, which is a scarce national resource. From this price, it is clear that all three elements identified below have resulted in huge losses for the exchequer. If one uses the recent 3G auction price to benchmark the spectrum price for 2G, as TRAI has recently suggested, the loss is of the order of a whopping Rs.190,000 crore.

- ✓ **Loss due to 122 licenses for new entrants in 2008: Rs.124,000 crore**
- ✓ **Loss due to cross-over licenses permitted to CDMA operators (Dual Technology License): Rs.36,000 crore**
- ✓ **Loss due to excess spectrum occupied by the GSM operators beyond 6.2 MHz:Rs.30000 crore**
- ✓ **Total Loss: Rs.190,000 crore**

11.10 The Audit in their Report adopting various criteria and indicators viz., the voluntary offer made by S. Tel, the price generated through 3G Auction and sale of equity by Unitech and Swan determined the presumptive loss to the exchequer in the category of issue of 122 UAS licences in 2008, 35 Dual Technology licences given in 2007-08 and Spectrum beyond contracted amount of 6.2 MHz, as under:-

Category	Criteria for working out potential loss to exchequer (Value 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

11.11 The Audit Report substantiated the above shown presumptive loss in the following manner:

"On 5th November 2007 through a letter addressed to the Hon'ble Prime Minister, S Tel limited who was a prospective licensee, having applied for UAS licences in July/September 2007, had offered to pay a higher price in the shape of additional revenue share for next ten years. The offer was enhanced by the firm with a stipulation to further revise it upwards, in case of any counter bid. At the prices offered by the Company, value of 122 new licenses and 35 Dual Technology licenses after discounting for the receivables in future years works out to ` 65,909 crores as against ` 12,386 crores actually received.

Auction of 3G spectrum was recommended by TRAI in its Report submitted to Government in September 2006. In its Report of 2010, they have observed that it was fair to compare 2G with 3G and recommended 3G prices to be adopted as current price of 2G spectrum in 1800 Mhz band. If these recommendations, which have not so far been accepted by the Government are taken into account, then the value of 2G spectrum allotted to the 122 new licensees and 35 Dual Technology licences would be much higher at about ` 1,52,038 crores as against the amount actually received.

Many of the new UAS licensees of 2008 have been able to attract substantial amount of Foreign Direct Investment (FDI). Value of a new company with no experience in the Telecom sector can primarily be taken as that of the license and access to spectrum. This would have been the prime consideration for foreign companies while infusing large amount of capital in the form of equity in these companies shortly after award of license. Based on this indicator, value of a pan India license works out between ` 7,758 crores and ` 9,100 crores as against ` 1,658 crores priced by DoT. The total value for 122 new licences and 35 Dual Technology licences would be between ` 58,000 to ` 68,000 crores as against the actual revenue of ` 12,386 crores realized. Thus, on the values determined through various indicators, the presumptive value of 2G spectrum on account of grant of 157 licenses in different circles during 2007-08 would be in the range of approximately ` 58,000 crores to ` 1,52,038 crores.

Spectrum was allotted by DoT to the existing operators beyond the contracted limits without imposing any upfront charge for such allotment. The value of spectrum held by 13 operators for 51 circles based on the 2001 rates worked out to ` 2561 crores. Based on the above indicators, value would be in the range of ` 12,000 crores and ` 37,000 crores. TRAI's recommendation (2010) for charging this additional quantity of spectrum has not been accepted by the Government so far.

While determining the loss, Audit made it explicitly clear that **"Any loss ascertained while attempting to value the 2G spectrum allocated to 122 licensees in 2008 can only be 'presumptive'**, given the fact that there are varied determinants like its scarcity value, the nature of competition, business plans envisaged, number of operators, growth of sector etc. which, depending upon the market situation, would throw up the price that it commands at a given point of time. Instead of attempting to come to a specific value of 2G spectrum which could have been possible only through an efficient market discovery process, we have looked at the various indicators to assess a possible

(presumptive) value, from the records made available to Audit rather than going for any mathematical/econometric models".

11.12 On 27 December, 2010, while interacting with the Committee, the C&AG of India stated:

".....so, we have made it very clear that we are doing it only by hindsight. Now, the issue is, why is it done? It is done only as a guiding phenomenon for future, if similar process has to be undergone in future, then we have the benefit of hindsight for the future as to how should we formulate policies. This is how it is done worldwide.....".

11.13 Explaining in detail the Audit calculation of the presumptive loss, the C&AG further stated:

"We spent a considerable amount of time on it. I do not have the benefit of being a lawyer myself but I do have a claim to having studied economics at some point of time. Any attempt to ascertain an economic loss will have to be based on certain econometric or mathematical methods. There is just no other way of doing that. Any model is hypothetical. It is based on certain assumptions and we tried different econometric models. we have the benefit of economic advisors in the Department. We thought of those also but unfortunately no assumption on any econometric model holds true in real life and that is why if we had used any of those models I think all the hon. Members would have found fault with us for assuming 'x', 'y' or 'z' or conditions which do not necessarily hold true in a real market situation. So, it was after considerable amount of deliberation that we decided not to use the economic model. We ascertained from other also. The view point that merged, and I have the benefit of a lot of Chartered Accountants also who helped us in this, was that we have to peg any loss of revenue to Government through certain existing market events which are real life situations, recorded situations, because those cannot be faulted. Of course, these can also be debated. There are always two sides to an argument but those were the best available under the situation.

"The term normally used in economics would 'opportunity lost' but in this we have used the word 'presumptive'. Why we have used the word 'presumptive'? Members have asked the question as to whether we have the parallels anywhere else in our Reports of CAG where this loss has been assessed and it has been accepted. My answer is a very clear yes and it happens on all our reports of revenue department where we say that the Department of Revenue, Department of Central Excise, Customs or Income Tax Department has under assessed and then they debate it also. They also call it a presumptive loss but in a large number of cases, there are at least about 40 per cent of our Reports accepting that loss and have taken measures to issue revised notices to the assessee and recorded that loss".

11.14 Responding to some related queries of the Committee, the C&AG emphatically remarked:

"..... I represent a Department which unlike the Finance Secretary does not have it. Hon. Member, had the Finance Secretary been present today he would accept my view point that we have the professional expertise and we are doing it every day. We have taken the opinions of the experts. We have the TRAI indicating in three different Reports that 2G and 3G are comparable; saying 2G is more or less 2.75 in the Report of 2010. This, of course, is by hindsight. So, we are also saying that 2G and 3G are comparable. Let me also make another assertion. Accountability has been fixed on the Government officers only by hindsight and much later after such investigations have been done on purported loss to Government where you can differ.

Sir, we have been very honest in our Report. Let me take you to Page 58 where in conclusion we have said specifically – I am reading the last sentence – "The entire process of allocation of 2G spectrum raises serious concern about the system of governance in the Department of Telecommunications which need to be thoroughly reviewed and revamped..."

11.15 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 can be debated "That is what we are doing just now". To ensure that such losses do not occur in any Ministry or Department of the Government, there is an imperative need to fix responsibility and enforce accountability for the lapses highlighted in the Audit Report. So, you can say that the loss is Rs.66,000 core, you can say that the loss is Rs.1,76,000 core, viewpoints can differ".

11.16 On 17th January, 2011, Shri Kapil Sibal, the Minister of Communications and IT while addressing a Press Conference had *inter-alia* made the following remarks:

"The figure of Rs.1,76,000 core, with the greatest respect to the C&AG is so utterly erroneous that I would have thought that a complicated and complex issue like this should not have led to the conclusions of presumptive loss of this magnitude. It has embarrassed the Government; it has embarrassed the nation and once. I place the facts before you, you will realize that will embarrass the opposition".

11.17 The Minister also said as under:

".... We are also extremely pained at the methodology adopted by the C&AG in coming to some figures which have no basis whatsoever. We believe it is human to err and to err is human and so though we respect the exercise of that

constitutional authority's power, we do believe that, that exercise is fraught with very serious errors which have resulted in the kind of sensationalism which has allowed the opposition to spread utter falsehood to the people of this country.....".

The complete transcript of the Minister's statement is at **(Annexures- XXXXXVII)**

11.18 Taking strong exception to the Minister's statement which raised several issues regarding parliamentary propriety and preserving and respecting the independence of the C&AG – an institution established by the constitution – and the PAC, a Committee elected by the Parliament, the Chairman, PAC wrote a letter to the Hon'ble Speaker on 19th January, 2011 **(Annexures- XXXXXVIII)** beseeching her to take prompt steps to prevent the recurrence of such constitutional impropriety on the part of the Minister.

11.19 In the sitting of the Committee held on 21st January, 2011, the Chairman apprised the Members of the Minister's statement and his letter to the Hon'ble Speaker in this regard. The Members of the Committee appreciated the step taken by the Chairman to preserve the independence and dignity of the PAC and the C&AG.

11.20 On 3rd February, 2011 the Hon'ble Speaker replied **(Annexures- XXXXXIX)** to the Chairman's letter. In the sitting of the Committee held on 15th February, 2011, the Chairman apprised the Members of the receipt of the letter from the Hon'ble Speaker wherein the concerns raised had been left unaddressed. The Members authorized the Chairman to meet the Hon'ble Speaker in person to apprise her of the real concerns of the PAC as highlighted in his letter.

11.21 On the issue of presumptive loss to the exchequer as revealed by the Audit, the Committee desired to know from the DoT about their own presumption/calculation of the potential loss on account of grant of 157 licences (122 UAS plus 35 Dual Technology Licences) in 2007-08. In reply, the DoT stated that in view of the policies and various decisions taken by the Department since 2003 regarding issue of UAS licences and allocation of 2G Spectrum, no exercise had been undertaken by them to estimate/calculate the loss to the exchequer.

11.22 The Committee then asked when the Department themselves had not carried out any exercise to estimate/calculate the loss, the basis on which the methodologies

adopted by the Audit to calculate the presumptive loss was being termed as erroneous. In reply, the DoT stated that their comments on various indicators adopted in the C&AG Report were as follows:

"Offer of S. Tel Limited:

- (i) M/s. S Tel Ltd. submitted its voluntary offer for allocation of spectrum vide their letter dated 05.11.2007 and 27.12.2007. In their letter dated 05.11.2007, the Company offered voluntarily to pay additional revenue share to the extent of Rs. 6000 crores to the DoT, over and above the spectrum charges revenue share payable as per the existing policy, over a period of 10 years from the date of the spectrum allotment. In their letter dated 27.12.2007 the Company, while referring to their earlier letter dated 05.11.2007 has 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 crore each was proposed in 1st and 2nd year.** The Company has also stated that, this amount shall become payable after allotment of **6.2MHz GSM spectrum in 900MHz frequency band for all the 22 circles and allowing sharing of active network and infrastructure.** UASL provides allotment of initial GSM spectrum of only 4.4+4.4MHz 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 start up spectrum is 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 allocated to license holders consequent to receipt of service license and on fulfillment of prescribed criteria. **There is no provision in the license conditions to allot spectrum on demand and allow sharing of spectrum, as was made out in the S Tel offer.** Therefore, this conditional offer of the Company did not have any merit for consideration.
- (ii) "Moreover, the company in their counter reply affidavit to SLP No.33406 of 2009 before Hon'ble Supreme Court in the matter of 'Union of India Vs. S. Tel Ltd.', stated that they have withdrawn their offer made to DoT vide letter dated 27.12.2007 at the argument stage before the Division Bench of the Hon'ble High Court of Delhi in LPA No.388 of 2009 in the matter of 'Union of India Vs. S. Tel Ltd.'

"Rate on the basis of 3G option:

- (i) The Report has selectively relied on the recommendations dated 11.05.2010 of TRAI on "Spectrum Management and Licensing Framework". The Audit has not considered the recommendations of TRAI that Spectrum in the 800,900 and 1800 MHz bands (presently used as 2G spectrum) should not be subject to auction. Spectrum in 800 and 900 MHz bands shall however may be subject to auction as and when it is refarmed for 3G and other future technologies. Further, the recommendations of TRAI for charging 3G price was for spectrum beyond 6.2 MHz and not for initial spectrum.
- (ii) "There was a legacy methodology for allocation of 2G spectrum while the 3G spectrum was allocated first time. TRAI, in its recommendations dated 28.08.2007, recommended that "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 cost for a new entrant is likely to be much higher than for the incumbent wireless operators". Therefore, it is not appropriate to compare the pricing of 2G spectrum with the 3G spectrum.

"Sale of Equity by M/s Swan & M/s Unitech:

- (i) M/s Swan Telecom Pvt. Ltd. and M/s Unitech Wireless Companies were awarded Licenses for Unified Access Services for 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 licensed service areas.

- (ii) The valuation of a company is a complex exercise and depends on a number of factors including the business case over the period of license. 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 (both direct and indirect) allowed for Unified Access Service License is 74%. 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".

11.23 The Committee queried as to whether the Department could suggest any methodology, other than the ones adopted by Audit, to calculate the presumptive loss. In reply, the DoT stated that the objectives of the policy governing the allocation of 2G spectrum that has evolved over the years since 1999 were (1) increase in tele-density and affordability to the consumer; (2) creation of a level playing field between incumbents and new entrants; and (3) revenue accrual to government. Apart from a low entry fee that was mandated by the first two considerations, revenue accruals to Government were in the form of annual recurring license fee and spectrum usage charges as revenue share. TRAI has also, in its recommendations in 2005, 2007, and 2010, not recommended auction methodology for 2G spectrum allocation. Theoretical exercises based on economic modeling were fraught with simplistic assumptions that make the valuations unreliable, and no methodology could therefore be suggested by the Department in this regard.

11.24 Asked to state specifically whether there would be a notional loss if a scarce resource like Spectrum was given at a price discovered few years earlier, the

Department replied that the premium placed on a scarce resource from the perspective of a producer need not necessarily translate into a loss when seen from the viewpoint of the consumer and public welfare. Government policy is formulated with a view to maximize public welfare, and not merely to maximize Government revenues. The pricing of different natural resources is often done in a manner that meets this objective. The rationale of the pricing decision in the case of 2G Spectrum may be seen in the background of the telecom policy as it evolved over the years. The terms and conditions of licenses which were originally awarded through a bidding process, after the National Telecom Policy 1994 introduced private participation in the telecom sector, changed under the New Telecom Policy 1999. The new policy recognized the need to bring greater competition in the telecom sector in both urban and rural areas and to provide a level playing field. With the implementation of the 'migration package' with effect from 01.08.1999, the policy evolved to replace a high one time entry fee with annual recurring license fee and spectrum usage charges in the form of a revenue share. The vision of the X Five Year Plan that "revenue generation should not be a major determinant of the macro policy governing the sector....". and that "spectrum policy needs to be promotional in nature; revenue considerations playing a secondary role" also guided the telecom sector policy in this regard. The various measures taken pursuant to the policy helped in increasing teledensity and in reducing the prices of mobile services. The provision of telecom services involves large investments. If the government charges a very high entry fee, it would reduce the resources available to the service providers to create infrastructure. This would eventually impact the prices charged by the service providers and thereby limit services to those who can afford higher priced services. Therefore, the concept of a notional loss when spectrum is given at a price discovered few years earlier has to be balanced with the gains accruing to the consumers and the general improvement in public welfare in the form of faster economic growth etc".

11.25 The Committee asked the CBI as to whether they agreed with the calculations of the C&AG. In reply, the Director, CBI submitted in evidence:

"We are not experts on that subject. So, we have asked TRAI to set up a Committee and then give us the exact loss figures.....we have calculated roughly between Rs. 40,000 crore and Rs. 50, 000 crore. That is our rough figure".

11.26 The Committee then desired to know from the TRAI, the status of the request made by the CBI to the Authority to set up a Committee and calculate the exact loss. The TRAI in its reply stated that the CBI vide its letter dated 19th January, 2011 had informed TRAI that in view of the directions of Hon'ble Supreme Court of India for investigation with emphasis on loss caused to public exchequer, it is necessary that price of the CMTS/Basic/UAS License which comes bundled with a spectrum of 4.4 MHz + 1.8 MHz be calculated on technical and commercial parameters for all telecom circles for various years from 2001 to 2008 on yearly basis. Further, they requested TRAI that the expert committee appointed by it may also be asked to work upon such prices for all telecom circles for various years from 2001 to 2008 on yearly basis.

11.27 Accordingly, TRAI vide its letter dated 27th January, 2011 requested the Experts to calculate the price of spectrum of 4.4. MHz + 1.8 MHz, based the technical and commercial parameters for the years 2001 to 2008 on yearly basis".

11.28 The Authority further stated that earlier TRAI had requested these Experts to study the issues involved and provide the value of spectrum in 1800 MHz band duly taking into consideration the inputs from the service providers. The Experts submitted their report titled "The 2010 value of spectrum in 1800 MHz band" dated 30th January, 2011.

11.29 On 8th February, 2011, TRAI recommended to be DOT that the price given by the experts be adopted as the best available figure.

11.30 A perusal of the TRAI's recommendations on "the 2010 value of Spectrum in the 1800 MHz band" revealed that the Expert Committee's report makes an assessment of the value of the 1800 MHz band spectrum from the technical as well as the commercial points of view. Having done so, the report determines the value of 1800 MHz spectrum in two tranches – price of contracted spectrum i.e. up to 6.2 MHz and price of incremental spectrum i.e. beyond 6.2 MHz.

11.31 TRAI further stated that the experts not only relied on the data relating to various LSAs but also on certain assumptions, some of which, though inherent in an exercise of this nature, are nevertheless significant. The various assumptions made

by them have been clearly brought out in the report. In the light of this, the Authority feels that while the figures given by the experts may be adopted, it should be done with the full realization that these are estimated figures and may or may not always match the exact market price.

A copy of the TRAI's evaluation of and comments on the said report is at
(Annexures- XXXXXX)

CHAPTER - XII

CBI INVESTIGATION OF THE 2G SPECTRUM CASE

12.1 As already mentioned in detail in Chapter I of this Report, on the basis of the nationwide concerns expressed and specific complaints received by the Central Vigilance Commission (CVC) against irregularities of grave nature committed in the allocation of 2G Spectrum under the UAS licencing and since the replies of the DOT to the Questionnaires of the CVC were not specific, the Commission decided to conduct a direct inquiry on the matter on 17th June, 2009. After completing the Inquiry, the CVC, on 12th October, 2009, referred the matter to the Central Bureau of Investigation for detailed investigation on the basis of Commission's Direct Enquiry Report **(Annexures- XXXXXXI)**. The CBI, accordingly, filed the First Information Report (FIR) on 21st October, 2009 **(Annexures- XXXXXXII)**.

12.2 The Committee asked the reasons for the CBI waiting for the CVC reference of the case and not registering the FIR and investigating the case on its own when so much information had already been in the public domain on the alleged irregularities committed in the allocation of 2G Spectrum. In reply, the CBI stated that CVC had been looking into the various complaints received by it, since January-February 2008 itself, regarding allegations about the allocation of UAS Licences in January 2008. CVC had initiated a direct enquiry under section 8(1) (d) of CVC Act, 2003. After completing said inquiry CVC sent its report to CBI vide its letter dated 12.10.09.

12.3 In the mean time a Source Information was also processed at CBI w.e.f. 12.01.2009 and was pending decision, when it was learnt that CVC was looking into the matter. Accordingly, it was decided to wait for outcome of CVC enquiry. Normally, when CVC undertakes a direct enquiry, CBI awaits the outcome and its report from CVC.

12.4 The Committee, then desired to know whether the facts in the CVC reference fell within the purview of the Prevention of Corruption Act. In reply, the CBI submitted in the affirmative and stated that the details of facts mentioned in the CVC letter /report

dated 12.10.2009 prima facie indicated abuse of official position by certain officials of Department of Telecommunications, in conspiracy with others. CVC in its letter dated 12.10.2009, vide Para 2, mentioned 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". Accordingly, FIR was registered under section 120-B of India Penal Code (Criminal conspiracy) read with section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 (criminal misconduct).

12.5 A perusal of the FIR revealed that it had been registered against unknown persons. Expressing their surprise, the Committee asked in evidence whether it was a general practice in the CBI to lodge an FIR against unknown persons. In reply, the Director, CBI submitted:

"Normally, we register a preliminary inquiry in which we establish who are the persons responsible and then, we lodge an FIR".

12.6 Asked to state why that practice was not followed while lodging the FIR in the 2G Spectrum case, the Director, CBI stated that the CVC in their Direct Inquiry Report did not name anyone and wanted the CBI to investigate further the irregularities that the Commission found in their inquiry. He further apprised:

"We were expecting them (unknown persons) in the Department of Telecommunications, private persons as well as Companies – all the three".

12.7 When the Committee desired to know whether identifying only the Departments would suffice, the Director, CBI replied:

"They (unknown persons) have been arrested and they are known now".

12.8 Referring to the CBI FIR which stated "Thus, the concerned officers of the Department of Telecommunications had a criminal conspiracy with certain persons/companies and by abusing their official position granted Unified Access Service Licences to a few selected Companies at nominal rate by rejecting the

application of others without any valid reason thereby causing wrongful loss to the Government of India”, the Committee asked whether the CBI had not come to the conclusion while lodging the FIR to identify those persons who caused wrongful loss to the Government. The Director, CBI responded:

“That is where we are in the process of investigation and we have made certain arrests”.

12.9 The Committee, thus, enquired about the date on which the first raid was done by the CBI after lodging the FIR. The Director, CBI replied that the raids started after October, 2010. He further stated:

“Some searches had taken place immediately after the case had been registered, but not against the Government Officers; Offices were searched and private companies were searched. The Government Officers were not raided initially – immediately, they were not raided”.

12.10 The Committee asked about the reasons for such a long delay between the lodging of the FIR and the first raid and desired to know whether there was any difficulty in investigating or coming to a conclusion or some resistance to it or whether there were any influences on the Agency not to proceed too quickly. In response, the Director, CBI submitted:

“There were a lot of records that had been initially seized; they were being examined plus we had the Radia Tapes which were given to us. We are going through the entire process”.

12.11 The Committee, thus queried whether the CBI would share the general impression that there were certain influences which prevented the Investigating Agency to act swiftly. In reply, the Director, CBI stated that the Supreme Court – had asked the CBI, the same questions, but they were very satisfied with the progress of the investigation.

12.12 The Committee retorted that they were not concerned whether the Supreme Court was satisfied or not and reminded the Director, CBI that he was duty bound to come out with the whole truth to satisfy the Committee and in the process the country. In response, the Director, CBI submitted:

“I would like to mention that I had just taken over about two months ago. I was not associated with this case, but I shall certainly go back, check and then, I will satisfy the Committee as to why this delay was there.

12.13 In a post-evidence information, the CBI explained the reasons for delay in investigating of RC DAI 2009 A 0045 (2G Spectrum case) which reads as follows:-

“During the course of investigation of the case, immediately after registration of the case search warrants were obtained from the Court of Special Judge CBI, Patiala house Court, New Delhi on 21.10.2009 and searches were conducted on 22.10.2009 for collection of incriminating documents in the Wireless Planning and Coordination Wing and in Access Services Cell of Department of Telecommunications, Sanchar Bhavan, Ashoka Road, New Delhi. During searches 59 files of Access Services Cell, which deal with policy issues relating to the Grant of Unified Access Services Licences (UASL) and issuance of UAS Licences, were seized. These documents pertained to review of Licencing Policy, decision of the Department of Telecom on TRAI Recommendations, procedure adopted by Department of Telecom for issue of Letters of Intent (LOIs) for UAS licences, First-Come-First-Serve Policy, etc. as regards the UAS Licence policy of the DoT and files of DoT regarding processing of 122 UAS Licence applications of 17 companies to whom UAS Licenses were issued in the January-March, 2008, and files regarding grant of UAS Licences to these 17 companies for 122 telecom circles throughout India. During investigation further records of Access Services Cell of Department of Telecommunication relating to issuance of UAS licences by DoT, especially the allocation of UAS Licences during 2003 onwards, were also taken over from Department of Telecom.

Apart from the aforementioned documents 25 files of Wireless, Planning & Coordination (WPC) Wing of Department of Telecommunications were also seized during searches of the said wing of DoT on 22.10.2009. These files pertain to the planning, coordination, availability and allocation of Spectrum to the new UAS licencees during the relevant period. During investigation further records of WPC Wing of DoT were also seized.

During investigation of the case, further searches under section 165 crore P.C. were also conducted during 23.10.2009 to 19.01.2010 at 21 other places at Delhi, Noida, Gurgaon, Jaipur, Mumbai, Mohali, Chennai, Gandhinagar and Bangalore, which include office premises of the various companies which got the Letters of Intent of UASL on 10.01.2008 regarding 2G Spectrum. These companies include M/s Swan Telecom Pvt. Ltd., M/s Datacom Solutions Pvt. Ltd., M/s Idea Cellular Ltd., M/s Unitech Wireless group companies (consisting of M/s Adonis Projects Pvt. Ltd., M/s Hudson Properties Ltd., M/s Unitech Infrastructures Pvt. M/s Aska Projects Ltd., M/s Azare Properties Ltd., M/s Unitech Builders & Estates Pvt. Ltd., Nahan Properties Pvt. Ltd. and Volga Properties Pvt Ltd.), M/s Spice Communications Ltd., M/s Tata Teleservices Ltd., M/s S Tel Ltd', M/s Loop Telecom Private Ltd., M/s Shyam Telelink Limited

and M/s Allianz Infratech Pvt. Ltd., all of which were allotted the UAS licences without any competitive bidding. The premises also included the premises of Auditor and person connected with M/s Green House Promoters Pvt. Ltd., Chennai and other companies allegedly related to kin of Shri a Raja, then MOC&IT. Voluminous documents were retrieved from these searches. These documented were put to detailed scrutiny and further records from Registrar of Companies, Banks, companies, etc. were also collected from time to time for such scrutiny *vis-à-vis* the flow of funds regarding shareholding of the companies, eligibility of the applicant companies were also sought and examined.

The investigation involved analysis of the issues relating to the Telecom Policy of the Government of India since 2001, and even before, especially in view of the issues raised by then DoT officials that First-Come-First-Served policy for issuance of licences, at the prices discovered in 2001, was in vogue since 2003. For this purpose further records of Department of Telecommunications (DoT)- Access Services Cell and Wireless Planning & Coordination Wing (WPC), Telecom Regulatory Authority of India (TRAI) were also taken over and analyzed.

The aforesaid documents were put to detailed scrutiny *vis-vis-vis* the facts of the case and further documents were collected, and witnesses were examined from time to time, as per needs of the investigation. The documents/files collected during investigation (till Hon'ble Supreme Court decided to monitor the investigation on 16.12.2010) run into more than 1 lakh pages, details of which is mentioned in a separate annexure, i.e. Annexure B. Numerous witnesses had also been examined by then.

It is also worth mention that in May, 2010 the recordings of around 5800 intercepted calls of Ms. Nirra Radia were also received by CBI for examination in connection with the investigation of this case. The same were also being simultaneously analyzed with respect to relevance in the investigation of this case.

Apart from the circumstances mentioned above, it is also relevant to mention that investigating officer of the case also completed investigation of another case (RC DAI 200 A 0014) in early 2010 and was also simultaneously attending to another important case under investigation (RC DAI 206 A 0006 – NTPC Case). Thereafter, he was on a foreign visit during April-may 2010 in connection with Basic (Computer Forensics) Training conducted by IACIS at Florida, USA. Apart from being busy in connection with preparation for said course/visit before such training, he also completed Peer Review Phase of Certified Forensic computer Examiner (CFCE) of 4 months duration at India, after returning from USA, simultaneously with the investigation.

In view of the circumstances mentioned above, there was no significant delay in the investigation of this case and the investigation was progressing. It actually took off on day to day basis, after general scrutiny of the documents was done,

in June-July 2010, before Hon'ble Supreme Court decided to monitor the investigation vide order dated 16.12.2010.

A status report dated 30.11.2010 about the investigation of 2G Spectrum case was filed by CBI in a sealed cover before the Hon'ble Supreme Court of India, On perusal of the same Hon'ble Supreme Court of India observed in its order dated 16.12.2010 that "The reports produced before the Court show that the CBI and the Enforcement Directorate have started investigation in the right direction".

However, Hon'ble Supreme Court, keeping in view the statements made by the learned Solicitor General and the learned senior counsel representing the CBI, that the Government of India and the CBI would have no objection to a Court monitored investigation by the CBI, and with a view to ensure that in a serious matter like this, comprehensive and coordinated investigation is conducted by the CBI and the Enforcement Directorate without any hindrance, decided to monitor the investigation of this case, vide and order dated 16.12.2010 in the said matter.

Further, a Progress Report about the investigation of the case was filed by CBI before Hon'ble Supreme Court of India on 10.02.2011, after perusing which, and hearing the arguments on both sides, Hon'ble Court observed in its order dated 10.02.2011 that – " we have gone through the reports and note with satisfaction that the Director, CBI has given due importance to the 2G Spectrum case".

12.14 The Committee asked when would the CBI be able to complete the investigation. In reply, it was stated that the investigation of the case is in progress and is likely to be completed by 31st March 2011, barring foreign investigation which may take a little longer time. In respect of the main issues contained in the CBI FIR, is likely to file a charge sheet before the designated court by 31st March, 2011. On remaining aspects the court shall be requested to allow continuing further investigation under section 173 (8) of Cr.P.C.

The Director, CBI further clarified:

"We will be filling our first charge sheet by 31st March, 2011. But that would not mean that the investigation of the case would completely be over. We would still be having supplementary investigation going on and there is a lot of foreign investigation involved. So, till those reports come, we will not call it a complete investigation'. However, the first charge sheet will be filed by 31st March, 2011".

12.15 Referring to a Press Report wherein it was mentioned that the Agency probing the 2G Spectrum scam opposed judicial monitoring of the case, the Committed asked the Director, CBI to clarify the matter, in response, he submitted:

"I do not think we have opposed..... we have welcomed the Court, in fact, we were very keen that it should be monitored by the Court because they were asking for all sorts of monitoring".

12.16 The Committee then pointed out that had that been the case, how it was coming out in the press that the CBI said 'no to the Court monitoring the probe. In reply, the DIG, CBI submitted:

"There was a question of capability of the courts to monitor the investigation. This was one issue which was debated. The legal position that the CBI took was that it was beyond the scope of the courts to monitor the investigation. The legal issue is that it is beyond the scope of the courts to monitor investigation. But once it was specific to this particular case, our Counsel said that in view of the complexity and vast national interest of this case we offer this case to be monitored by the Supreme Court. There are two separate issues, one is the legality issue and the other is specific to this case alone".

12.17 In post-evidence information, the CBI further clarified that the Counsel for CBI argued on the issues relating to scope of monitoring of cases by courts, in general, and legal issues as to in what circumstances and in what manner courts can monitor the investigations. However, CBI had no objection to a Court monitored investigation in view of the seriousness of the allegations in this particular matter.

12.18 In response to a specific query regarding the number of documents seized and witnesses examined by the CBI so far, it was replied that 1,626 documents running into 1,38,765 pages had already been seized and 115 relied upon witnesses, as mentioned in the charge sheet filed by the CBI on 2nd April, 2011 had been interrogated.

12.19 Drawing the attention of the Director, CBI to Shri Arun Shourie, the former Telecom Minister's statement that he had met the then Director, CBI and given him some documents, the name and telephone number of the whistle- blower etc, the

Committee asked whether any such record was available and whether the then Director, CBI took up the issue forward or ignored Mr. Shourie's meeting, the documents etc. In response, the Director, CBI stated that he would get back to the Committee after checking the records.

12.20 In a post-evidence reply, the CBI stated that no such letter/communication is available on our records. However, CBI was in touch with Shri Arun Shourie since January, 2011 and he has been examined by CBI on 25.02.2011. the source whom Shri Arun Shourie has been publicly referring to, has been in touch with CBI and information furnished by him was considered during investigation.

CHAPTER – XIII

THE RADIA TAPES

13.1 During the examination of the subject, the Committee's attention was engaged to a series of articles published in the 'Outlook' and the 'Open' magazines wherein the transcripts of the conversation of Ms. Niira Radia with various journalists/politicians/Corporate houses were extensively highlighted. As some of the conversations centred around allocation of portfolios in the Union Cabinet, payment of bribe in the allotment of 2G Spectrum etc. the Committee, in the fitness of things, sent for the complete Radia Tapes in the possession of the 'Outlook'. The Editor-in-Chief of the Magazine accordingly supplied the Tapes. Some of the relevant transcripts of the Tapes were also downloaded from the website of the Open Magazine.

13.2 In order to verify the authenticity of the transcripts of the conversations published in both the magazines, the Committee called the Editors of the respective magazines to appear before them. While deposing before the Committee, Shri Manu Joseph, Editor, 'the Open' submitted:

"A very credible person had approached the Open Magazine saying that these are the transcripts that are available. I listened to them on my computer. Some of these voices belonged to household names. Anyway, preceding this, there were the next versions of some of the transcripts which were doing the rounds. Even at that time, we had checked they were, in fact, from the concerned departments. Later on, we had no problems with the veracity of the tapes, with the validity of the tapes. Till date, no person has ever questioned the validity of the tapes. There were several conversations. We were interested only in those conversations that were of national interest. We did not just take the recordings and dump them on the website. There was a process of selection and selection was based on national interest.

13.3 Asked to state about the main and relevant contents of the conversation from the Committee's view, Shri Joseph stated:

"Most of the conversations are focused on from my understanding, who should be the Telecom Minister and to some extent who should not be the Telecom Minister. This is my broad understanding of the conversation".

13.4 When the Committee desired to know with whom Ms. Radia had conversation on allocation of portfolio and 2G Spectrum, Shri Joseph responded:

"There were several prominent journalists. Then there were Ratan Tata and Kanimozhi and Raja".

13.5 About the prominent Journalists, Shri Joseph added:

"Barkha Dutt, Vir Sanghvi, and I remember, Prabhu Chawla. There were several other names which we could not confirm. After Outlook carried the entire transcripts, I heard journalists saying that this voice belongs to this person and that voice belongs to that editor. We should understand that there are some voices that are very recognizable and voices especially of print journalists, are not so, but the objective of the telephone call and the objective of the conversation concerned 2G.

13.6 The Committee then asked whether it was a fact that some TV Channel objected to the publication of the conversation. In reply, Shri Joseph submitted:

"I got an SMS from Barkha Dutt after the issue saying that she is disappointed. I sent an SMS back. I sent her an e-mail. I do not remember if I got a response. But, after that we were on a TV show on NDTV where she said that she would take questions from editors. I asked my questions and she gave her answers.

13.7 The Committee desired to know whether in the process of publishing the transcripts, the journalistic ethics were maintained. In response, Shri Joseph submitted:

"Let us not forget that the question of journalistic ethics that NDTV is raising is, if you are going to carry the transcripts that involved the conversation of Radia and Burkha Dutt, why did you not contact Burkha Dutt and get her views on why she said what she said. But then she should understand that before we went to Press, as an Editor, I am just sitting with this information and what the information is suggesting is that Burkha Dutt is very close to Radia. So, if I am going to tell Burkha Dutt that we are going to carry the transcripts, it is only logical for me to presume that the first person Burkha Dutt is going to call is Niira Radia. So, there were excellent reasons why we could not follow the standard journalistic norms of calling the concerned people and taking their views which we would have in normal circumstances. We are a high quality magazine but sometimes extraordinary stories need extraordinary solutions".

13.8 In response to a specific query, Shri Joseph emphasized:

"The conversation that we have published is authentic. It is exactly what was in the recordings. We have no doubt about it".

He summed up:

"The decision to carry these transcripts was that they were of national interest. Otherwise, we would not have the moral strength. You should understand that as journalists and as smart journalists working for a magazine, we absorb considerable risks by carrying such stories and doing things like this. If there was no moral strength within us, we would not be able to carry such stories".

13.9 Shri Vinod Mehta, Editor-in-Chief in his deposition before the Committee, submitted:

"The first set of recordings was published by Outlook in its November 29, 2010 issue which hit the stands on November 19. In all, the magazine accessed 140 conversations. Outlook put up 40 conversations on its website www.outlookindia.com while it printed 13 select conversations in its print edition. The selection was made on the basis of the relevance of a particular conversation in the 2G scam contest as well as those that showed the lobbying which went on in which journalists were also involved. The conversations were incoming and outgoing calls to and from Niira Radia. Those who figured in the tapes include A. Raja, Kanimozhi, Ratan Tata, Tarun Das, Barkha Dutt, Vir Sanghvi and M.K. Venu".

13.10 Asked to state the specific reasons for the publication of the transcripts, Shri Mehta stated:

"About reasons, on hearing the contents of the tapes, the magazines felt that it was in the public interest to highlight conversations that showed how UPA-II formation, the Telecom Portfolio in particular was manipulated by the interested parties. The conversation also showed closeness of lobbyists in the corridors of power. Given that this represented an unprecedented peak into of democracy and its institutions, we felt that tapes should be out in the public domain".

13.11 The Committee then desired to know which specific conversations centred around the appointment of a Minister. In reply, Shri Mehta submitted:

"The first lot and even the second lot showed that there was very hectic lobbying to make sure that Mr. Raja was re-appointed when UPA-II came to power. Those people who wanted him reappointed were not sure whether he would be reappointed. There were two sets of problems – one set of problem was whether the DMK would nominate him. The second set was, whether the UPA and the Prime Minister in particular would want Mr. Raja. So, the people who were promoting the candidature of Mr. Raja wanted to ensure that both objections would be neutralized. So, there was an effort to influence the DMK family and especially Mr. Karunanidhi; and there was an effort to influence the UPA and the prime Minister, who initially had made it known – I do not know he did not make a public statement but it was well known- that he had some reservations about Mr. Raja. So, the conversations, how should I put it, were sometimes comical; sometimes threatening; there was an element of blackmail and bribery in those conversations. To use another word, there was also some talk of gratification for various people, if the candidature was A, promoted from Chennai where was already some dispute in the family who should be sent for this Ministry. Secondly, how to neutralize the opposition of the Congress Party in particular, the Prime Minister, vis-à-vis the appointment of Mr. Raja"

About the conversation on 2G Spectrum, Shri Mehta apprised:

"It is obvious a question that the Tatas were very worried that they would not get something that they expected from Mr. Raja or they would not get that amount of spectrum that they expected from Mr. Raja and of course, first of all, they were worried, if Mr. Maran – he was the other name that was being mentioned at that time – got the job, then the Tatas would be very unhappy. The Tatas have a history of problems with Mr. Dayanidhi Maran which are not secret.

13.12 As regards the conversation between Ms. Radia on the one hand and Shri Vir Sanghvi and Ms. Barkha Dutt on the other, Shri Mehta opined:

"....Now, we journalists talk to politicians all the time and there is nothing new about that. We get our information from politicians and politicians get information from us. It goes two ways. But I think we know the Lakshman Rekha that where the journalists first job is to go after the truth and reveal the truth and he or she cannot get involved in the lobbying for certain individuals and for certain parties. Therefore, any friendship that you may have, any relationship that you may have, any stringing that you may be doing of your source, there is a point at which it must stop".

13.13 Asked to state what could be done to ensure that the Journalists did not cross the Lakshman Rekha, Shri Mehta replied:

"The professional bodies, like the Editors Guild and the Press Council of India have tried to do it in the case of business journalists. They tried to lay down certain norms. But these norms are so elementary, like do not accept sweets, gifts, etc. We all know what they are. We all know when it is a Diwali gift and when it is a bribe. The Press Council of India has tried to do it in the case of business journalists. they tried to lay down certain norms. But these norms are so elementary, like do not accept sweets, gifts, etc. We all know what they are. We all know when it is a Diwali gift and when it is a bribe. The Press Council of India has tried to do it. But it has not come as a great revelation. Do not accept favours of monetary or material nature. I used to have one rule during Diwali. If somebody sends you one box of sweets, keep it. But if they send 12 boxes of sweets, then you return it. Everybody knows the rules and the norms. Everybody knows what is to be done and what is not to be done. I think the biggest deterrent for journalists is the shame of being caught.

13.14 About Shri Ratan N. Tata' personal handwritten letter to the President of the DMK party, Shri Mehta stated:

"Sir, the Chairman has mentioned one issue where there is a handwritten letter by Mr. Ratan Tata one month after he got a certain licence and a certain spectrum. That handwritten letter was delivered personally by Niira Radia and did not go through the post. That letter speaks of nothing else but says what a wonderful, honest, sane, careful man Mr. Raja is. So, the whole letter is a praise for Mr. Raja"

In response to another related query, Shri Mehta deposed:

"Why was the anxiety to get Mr. Raja into the Telecom Ministry? You must also ask that question. It is not that people like Mr. Raja's face or he was a wonderful guy. There was obviously a certain purpose. I do not have any smoking gun to prove that it was done for 2G licences. You talked about the kind of gratification that was offered to ensure that Mr. Raja gets the Telecom Ministry cannot be a coincidence. It cannot be because he was so reasonable. There must have been a reason why this anxiety was there and the anxiety comes from people of such a high order that they are not just ordinary people, we are talking about the best and most dignified and respected industrialists of this country. If they can show such anxiety and this Lady is working for them, then I think it is quite clear why the anxiety was there.

13.15 As regards the veracity of the transcripts of the Radia Tapes, Shri Mehta emphatically stated:

"Nobody, whose transcripts that we have printed, has, till date, denied either the authenticity or the veracity or the fact that they have been edited or some mischief has been done. Nobody had denied starting from Mr. Tata to Niira Radia to Kanimozhi. We have not received a single letter from anybody.

He continued:

"Every assumption that we have made in the story has turned out to be true; in fact even worse. Even as we talk, all these big businessmen are coming up and down from the CBI building; one gentleman is in jail; CBI raids have taken place; he has resigned. So you should say that I was too kind in my assumptions".

13.16 The Committee asked Ms. Nira Radia whether the transcriptions of her conversation with various people, as published in the Outlook and Open magazines were correct and authentic. Ms. Radia replied:

"We have not accepted any of these conversations".

13.17 The Committee asked whether any notice had been served to the Editors of the two magazines. In reply, Mr. Radia stated:

"We have served a legal notice at the time they published the conversations, because, I believe, there is a tremendous amount of distortion in what they published and in the context in which they published the conversations and the real conversations. I believe that there is a tremendous amount of editing that has taken place in the conversations".

13.18 The Committee then retorted that they were informed that nobody had legally contests or contradicted what was published in the magazines. In reply, Ms. Radia stated:

"If I can say, there are two aspects to this. When the conversations were made public, we did what we had to. We had to do it in terms of making at least protesting it as far as the magazine is concerned. As far as legal recourse available to us is concerned, we have time for the legal recourse".

She further stated:

"..... Our priority at that time was to cooperate with the agencies because that was what was required of us to do. That is what we have done. As far as the magazines are concerned, I would imagine you are aware that my clients, who are the TATs, have taken action and they moved the court on the larger issue of privacy in which the court itself has served notices to these magazines".

13.19 Asked to state specifically whether any legal notice was served or not, Ms. Radia at last admitted:

"We served only a protest. We have not taken legal action".

She further stated that she was intending to take legal action.

13.20 When the Committee pointed out several of her exact conversations on payment of bribe for spectrum allocation of portfolio in the Union Cabinet, she simply replied that she did not recollect any thing.

13.21 The Committee then desired to know that after she was made witness by the CBI, the investigating agency must have played the tapes to her and whether she agreed with the conversation or contradicted it. In response Ms. Radia stated:

"Sir, the matter is sub-judice".

She further stated:

"I am glad that the investigating agencies went into the details. I am glad that they heard my conversations in the context that they needed to be heard. I am glad that they looked at documents and papers that were submitted in the context that had to be given and not taken out of context just because a magazine chose to carry something in a particular way. The magazine would have chosen to carry something in a particular way because we may not entertain the magazine. Today, the media is driven in a completely different way. It is driven bottom-line. It is sensationalist. So, we have taken a view to approach things slightly differently".

13.22 The Committee then queried as to whether she meant to say that both the magazines were driven by some extraneous consideration. In reply, Ms. Radia submitted:

"I think, there is a conspiracy. I believe, there is a corporate conspiracy and I have seen it".

Asked to point out the conspirators, she replied:

"Anybody who would not want competition".

13.23 The Committee then desired to know whether she was performing a public relation service or actually lobbying for her client to get them certain advantages. The Committee also categorically asked whether carrying Tata's personal handwritten letter to Mr. Karunanidhi was to part of her job, according to the mandate. In reply, Ms. Radia submitted:

"We are not lobbyists. It is not our job to lobby. Yes, it is our job to talk to various stakeholders, but that does not necessarily mean that we are lobbying for our client. We are simply communicating a point of view".

On the issue of carrying Mr. Tata's personal letter, she clarified:

".....our role, as defined in our mandate, is to communicate our client's point of view. Carrying the letter was to hand over the letter to Shri Karunanidhi on behalf of Shri Tata....."

13.24 Asked to state whether her conversation with Ms. Burkha Dutt did not give an impression that she was lobbying. In response, Ms. Radia stated:

"I think if you listen to the conversation in the context that they need to be listened to, everybody is discussing who is becoming what cabinet minister and what they are doing at that time. I do not think it was anything different from watching TV channels or watching news reports. Giving a particular point of view, we were simply asking information from journalists who were in touch with political people, who were on the political beat, who had information or who may know things because they have been reporting certain things in a particular manner that they seem to know things. All we were doing was just asking information from them".

13.25 The Committee then asked whether the conversation did not indicate that Ms. Dutt was leading her up the garden path. Ms. Radia replied:

"I do not think that anyone was leading anyone up the garden path. I think, we were just having a conversation about who is becoming the Cabinet Minister and I was relaying to her the anxiety of what our client had lived through in the previous years, prior to that. I think all I was giving her was information as I knew it about a particular person and the chemistry that existed between my client...".

13.26 On being asked to state categorically and truthfully as to whether the tapes were genuine or not, Ms. Radia submitted:

"At least the tapes that I have heard from the investigating agencies are genuine tapes".

13.27 Asked to furnish the list of the conversations that were played to her by the CBI, Ms. Radia deposed:

"Sir, we will write to the concerned agency and we will ask them, if this is permissible under law. We will also make a reference of the PAC".

13.28 The Committee then asked Shri Ratan N. Tata whether he had heard the Radia Tapes. She Tata submitted in evidence in the affirmative. Asked to authenticate whether it was his voice in the conversation with Ms. Neira Radia, Shri Tata replied in the affirmative. He also submitted that it was absolutely the voice of Ms. Radia too. When asked to state whether the tapes were manipulated or doctored, Shri Tata replied in the negative.

13.29 As regards moving the Court against the tapes, Shri Tata clarified:

"I have objected to the leaking of the tapes and it should be the right of every person to be innocent until proven guilty and it is not for the publications to attribute guilt to people. Why I did this is because my picture is on the cover of magazines saying that I was associated with the 2G scam".

13.30 The Committee asked, in that case, whether he had served any legal notice to the publisher for falsely implicating him. In reply, Shri Tata submitted:

"Unfortunately, our legal people have said no".

13.31 The Committee, then, desired to know whether his conversation with Ms. Radia did not imply that he was advocating Shri Raja's case. In reply, Shri Tata deposed:

"Let me just say two or three things. I am not questioning the authenticity of the tapes. I will say that at no stage have we done anything for Raja or in any way gratified him. I will also say that Ms. Radia was not working for us alone. She had many other clients. She has been in fact a supporter of Mr. Raja in many ways. The conversations in my view do not in fact imply that we were arranging his Cabinet positions and securing anything. We had a chemistry problem with

Mr. Maran in the past and certainly, between the two at that time, I would have much preferred to see Mr. Raja rather than Mr. Maran".

He further clarified:

"..... on Ms. Radia, let me reiterate that we have not had any arrangements, dealings or any interaction with her other than what I have described. She has been our public relations person interacting with the media. She has been no different on advocacy than a CII or a FICCI in terms of endeavouring to have a level playing field. At no stage have we had a facilitator doing more than what I had indicated. We are not her only clients and she is not captive to us. I can speak for what we have done and I can hold my hand to my heart and say that we have not dithered on that at all".

13.32 Referring to his personal handwritten letter to the DMK patriarch wherein he had *inter-alia* stated that 'on the issue of Spectrum also, his (Raja's) stated policies for most part have been legally sound, rational and well-reasoned; the Committee asked whether he was not advocating for Mr. Raja's continuance as the Telecom Minister. In reply, Shri Tata submitted:

"I have stated repeatedly and I would just say it again that if done well, the DMK can possibly claim telecom to be its greatest achievement, etc. for the nation's growth. This growth would need to come from rational and fair policies without favourites and without pandering to vested interested groups that are only interested in serving themselves.

What I am trying to say is that if there is a controversy of what Mr. Raja is alleged to have done, it is in the implementation of the policy. The policy of creating greater number of applicants, opening the industry to more players is not an irrational policy."

13.33 The Committee then queried the basis of writing the letter to the Chief Minister of Tamil Nadu who had nothing to do with framing or implementation of the policies at the central level and whether in the fitness of things it would have not been more appropriate had he written to the Prime Minister. In reply, Shri Tata stated:

"Quite right but there is a context to this letter. The context was that there was a great deal of pressure on the Chief Minister at that time to remove Mr. Raja when there was no controversy".

He further stated:

"I explained the context in which I wrote to the Chief Minister. There could have been many things one could have done. One might have issued a press statement saying that his policies were fair".

13.34 Asked to state his feelings after his conversations with Ms. Radia were published, especially in view of the reputation of the Tata, Shri Tata replied:

"I am very disturbed and upset with it. Never once before has there been this kind of attack, and more so, because I really do not think that we have ever done anything like what are being alleged to be doing. What have held our head high and I think this has been a really upsetting thing. It has made me very sad because I think we have tried to uphold those values and standards throughout our existence and in an area of telecom to have it ripped away in various publications. you know, making allegations of this nature, almost condemning you before you have any recourse, not printing your clarifications – this has been a sort of bad thing in a democracy that we otherwise have been very proud of, I think, by comparison".

13.35 When the Committee asked Shri Vir Sanghvi and Ms. Barkha Dutt, who also figured in the Radia tapes, about the authenticity of their conversation as published in the magazines, both of them in separate written communication stated that they had challenged, objected and protested against etc. But none of them had so far initiated any legal proceedings.

CHAPTER - XIV

AUCTION OF 3G AND BWA SPECTRUM

14.1 Third Generation (3G) systems represent the next step in the evolution of mobile cellular communication. 2G systems focus on voice communication, while 3G systems support increased data communication. The 3G networks would be capable of providing higher data rates upto 2 Mbps and shall be capable of supporting a variety of services such as high-resolution video and multi media services in addition to voice, fax and conventional data services.

14.2 In accordance with National Frequency Allocation Plan, 2002, the requirements of IMT-2000 (3G) applications may be coordinated with existing users initially for 1920-1980 MHz paired with 2110-2170 MHz (FDD mode) and 2010-2025 Mhz (TDD mode) depending on the market needs and availability, as far as possible.

14.3 Thus, while 2G services focus on voice communication, 3G services support increased data communication and is capable of supporting video, multimedia services in addition to normal voice services.

14.4 The Department of Telecommunication vide their D.O. letter No.L-14047/09/2005-NTG dated May 22, 2006 sought recommendations from the Telecom Regulatory Authority of India (TRAI, henceforth 'the Authority') on the methodology for allotment of Spectrum for 3G services and its pricing aspects. TRAI Recommendations on auction and allotment of 3G Spectrum was received on 27th September 2006.

14.5 The salient features of the TRAI Recommendations were as follows:

- Spectrum identified for 3G should be treated as a stand alone allocation and not as an extension of earlier Spectrum allocation of 2G;
- The DoT (Government) should realize a Spectrum acquisition fee from telecom service providers;

- Following Spectrum has been identified for 3G services:
- 2x25 MHz in 2.1 GHz band (5 blocks of 2 X 5 MHz);
- 2x2.5 MHz in 800 GHz band (2 blocks of 2 X 1.25 MHz); and
- 2x5 MHz in 450 GHz band (Single block of 2 X 5 MHz);
- Rural roll out obligations have been recommended as part of overall roll out obligations in a time bound manner;
- Base price for acquisition of Spectrum for 3G has been recommended as Rs. 80 crore for Delhi, Mumbai and category 'A' circles/areas; Rs. 40 crore for Chennai, Kolkata & category 'B' circles/areas; and Rs. 15 crore for category 'C' circles/areas; Reserve Price for Pan India allocation of one block of 2x5 MHz 3G Spectrum is Rs. 1010 crores.
- Annual Spectrum Charges @ 1 percent of AGR after moratorium of one year.

14.6 The Authority also recommended a reserve price of Rs.1010 crore for pan India allocation of 2X5 MHz of 3G Spectrum. The Telecom Commission desired to double the reserve price recommended by TRAI i.e. from Rs. 1010 crores to Rs. 2020 crores for PAN India operation of 3G services. Therefore a reference was made to TRAI on 1st July 2008 to seek their comments and views on the doubling of reserve price. TRAI replies on 12th July 2008 accepting the doubling of reserve price. Guidelines for auction and allocation of 3G Spectrum were issued on 1st August 2008 and certain amendments on 11th September 2008. The issue of 3G auction was discussed in the Telecom Commission on 11th November 2008 and Telecom Commission proposed no increase of annual Spectrum charges above the existing annual Spectrum charges for 3G services. Since there was a variation between TRAI recommendation on the annual Spectrum charges and the Telecom Commission's approval on 11th November 2008, a reference was made to TRAI on 24th November 2008 seeking their views on the annual Spectrum charges.

14.7 The TRAI recommended the decision not to levy any charge for Spectrum, has invited lot of flak from experts on the ground that DoT has failed to gauge the economic value of Spectrum and natural resource is given free to telecom operators causing huge loss to the government exchequer.

14.8 TRAI recommended for auctioning of the entire available Spectrum, Telecom Commission did not accept the proposal and instead it was decided to auction only five block of 2x5 MHz of Spectrum (including once block for BSNL/BTNL) in telecom circles where more than 25 MHz of Spectrum is available. In the circle where less than 25 MHz is available, number of blocks available with be auctioned.

14.9 Minister for Communication & IT referred the issue of allocation of 3G Spectrum to CCPA and Finance Ministry which suggested to double the reserve price to Rs. 4040 crore. In January 2009 CCPA referred the case to Group of Ministers for further decision.

14.10 An Empowered Group of Ministers was set up in July 2009 to consider the following:

- (i) Quantum of 3G Spectrum to be auctioned;
- (ii) Annual Spectrum charges and additional administrative charges to be levied.
- (iii) Setting the reserve price for auction in relevant bands;
- (iv) Setting the reserve price for broadband wireless access (BWA) Spectrum; and
- (v) Setting the reserve price for Spectrum for Evolution-Data Optimized (EVDO) services;

14.11 The EGOM gave the following decision in August 2009

- 4 blocks of 2x5 MHz of Spectrum in the 2.1 GHz bank should be auctioned in telecom circles where 20 MHz or more Spectrum is available. In other circles where less than 20 MHz spectrum is available, the number of available 5 MHz block should be auctioned;
- No increase of annual spectrum charges above the existing annual Spectrum charges for 2G services;
- Rs. 3500 crore to be the pan India reserve price for one block of 2x5 MHz of 3G Spectrum;
- Rs. 1750 crore per one block of 20 MHz of 3G Spectrum for BWA service; and

- Rs. 875 crore per one block of 2x1.25 MHz of EVDP Spectrum in 800 MHz;

Vacation of 2G/3G Spectrum by Defence

14.12 As instructed by the GoM formed in 2007 for the 'vacation of Spectrum and raising resources for the purpose' a Committee has been formed under the chairmanship of NSA to suggest a workable plan for alternate network to facilitate quick release of Spectrum for mobile services without compromising the requirements of Defense services.

14.13 An MoU was signed between DoT and Ministry of Defence (MoD) in May 2009 for (i) vacation of Spectrum by defense and (ii) setting up of an exclusive, dedicated OFC network for Armed forces. Salient features of the MoU are:

- MoC and IT will set up an exclusive and dedicated OFC network for Armed forces and both the Ministries will make all efforts to bring down costs to the extent possible and compress the time of completion of the network; and
- The Armed forces will release the Spectrum in a time bound manner.

14.14 The EGOM held few more meetings in the month of November and December, 2009 to identify the number of blocks of 3G spectrum to be made available for auction. It was decided that 3 blocks of 2x5 MHz of spectrum in 2.1 GHz band shall be auctioned pan India and 4 blocks of 3x5 MHz of spectrum shall be auctioned in five circles/service areas.

14.15 To sum up the entire process of auction of the 3G & Broadband Wireless Access (BWA) spectrum, the EGOM decided to keep a pan India reserve price of Rs.3500 crore per one block of 2x5 MHz of 3G spectrum. It also decided to keep a pan India reserve price of Rs.1750 crore per one block of 20 MHz of BWA spectrum. Three blocks of 3G spectrum in 17 Telecom Circles and four blocks in five circles were finally decided for auction.

14.16 Accordingly, Notice Inviting Applications (NIA) was issued on 25th February, 2010. A controlled, simultaneous, ascending e-auction was conducted by M/s. N.M. Rothschild and Sons (India) Pvt. Ltd., Mumbai on behalf of the DOT. Nine Companies participated in the 3G auction and seven Companies won the auction in various telecom circles. Successful bidders, including BSNL and MTNL who were given 3G spectrum in advance, remitted a total amount of Rs.67718.95 crore to the Department. The auction started on 9th April, 2010 and completed on 19th May, 2010.

14.17 Similarly auction of BWA spectrum started on 24th May, 2010 and completed on 11th June, 2010. Eleven companies participated in the auction and six of them won the auction in various telecom circles. 2 blocks of 20 MHz in 2.3. GHz band was auctioned for BWA services. Successful bidders, including BSNL and MTNL who were allotted BWA spectrum in advance, paid a total amount of Rs.38543.31 crore to the DOT.

14.18 Thus, the government received revenues to the tune of Rs.1,06,262.26 crore from the auction of 3G and BWA spectrum which was five times the reserve price:

A representative of the DOT apprised in evidence:

“These figures include revenue from BSNL and MTNL who did not participate in the auction but they were given spectrum earlier in 2008 under the assumption that whatever the market determined price is discovered in the 3G auction, they will pay the same amount. They have paid the same amount for the spectrum”.

14.19 The Committee desired to know the date when the telecom PSUs paid the amount. In reply, the representative of the DOT stated:

“They paid it together with the others... 10 days after the close of the auction”.

14.20 Asked to state the rationale for giving 3G and BWA spectrum in advance to BSNL and MTNL, the representative of the DOT submitted:

“The rationale for giving them spectrum in advance was, firstly, they would not be bidding being Government companies since Government was the one

who was conducting the auction, so there would be conflict of interest. Second, also being public sector undertakings they have longer procedures for roll out”.

14.21 The Committee asked whether the PSUs paid in accordance with the highest bidder of the lowest bidder. The representative of the DOT replied:

“When the spectrum was allotted to them in 2008, the decision taken was that they would pay the same amount as the highest bidder in the price discovered during the auction and they have matched the price. The maximization of revenue for Government was an objective”.

14.22 On being asked to state categorically the ramifications had the telecom PSUs been allowed to bid for 3G/BWA spectrum, the representative of the DOT submitted:

“The BSNL is 100 per cent Government owned company. If it were to bid in an auction with private providers, the criticism could be that the Government on the one hand is trying to sell spectrum and saying that it will give it at a price which is determined by the market and on the other hand, it is influencing the auction by giving one of its companies to bid”.

14.23 Another representative of the Department stated that there was nothing wrong in their participation in the bid except for the implication that they would not have got everywhere. Asked to elaborate, he further stated:

“It could have participated in the auction and it would have been all right. Had it participated in the auction, since there are 22 circles, as the country is divided into 22 areas and auction for each circle is separate, it could not be sure of getting spectrum in all the 22 circles. Those who participated got in 13, 13, 9 or seven circles. If the PSU had participated, they would not have got the pan India presence. It is a public sector unit and it is the question of Government policy. Whether you want to reserve one slot for them everywhere or you ask them to participate, win somewhere and lose somewhere. By giving them in advance and reserving one slot for them had some logic. They will have pan India presence. It should have been done 16 months or 18 months earlier is a matter of opinion. Different views could be there and they could be justified”.

14.24 The Committee asked Shri Brijendra K. Syngal as to whether it was proper to allocate 3G Spectrum to BSNL and MTNL in advance in 2008 whereas they paid the Spectrum price after two years i.e., in 2010. In reply Shri Syngal stated as follows:

"In my view there is no harm in allocating 3G and BWA Spectrum to BSNL and MTNL in advance. As is very clear these organizations are not as nimble footed as their private sector competitors and counter parts. They are hemmed by DoT in all their actions for procurements etc. they are extremely bad in marketing, selling and customer care. They are not board governed, but in marketing, selling and customer care. They are not board governed, but DoT managed. They have friends who work overtime to stall nay action taken by them by using all pseudo methods and playing all sorts of dirty tricks. Therefore, they have serious handicap to be a formidable player in a market with cut throat competition. Therefore, they have to be given that handicap to start early, no harm. After all, they are but on tax Payer money".

14.25 When the TRAI was asked the same question, the Authority aired a different view and stated that level playing field is one of the cardinal principles of the New Telecom Policy'99 (NTP'99). Even when DoT was functioning as an operator, license fee was payable by DoT also. The relevant excerpt from NTP'99 is quoted below:-

".... Based on the immediately available frequency spectrum band, apart from the two private operators already licenced, DOT / MTNL would be licenced to be the third operator in each service area in case they want to enter, in a time bound manner. **In order to ensure level playing field between different service providers in similar situations, licence fee would be payable by DoT also.** However, as DoT is the national service provider having immense rural and social obligations, the Government will reimburse full licence fee to the DoT".

14.26 The Authority never recommended allocation of 3G Spectrum to BSNL and MTNL in advance. The Authority had no knowledge about the rationale for allocating advance Spectrum to the State owned Companies. The Authority is of the opinion that by allocating advanced spectrum to BSNL and MTNL, before it was auctioned amongst private operators, level playing field to all the players has been compromised to some extent.

14.27 The Committee then asked Shri Syngal about his opinion on the unprecedented revenue generated through the auction of 3G & BWA Spectrum. Shri Syngal responded:

"I would say that we made corrections in the 3G Spectrum auction and the Broadband Wireless Access Spectrum auction. The Government is a beneficiary of close to about Rs.109,000 crore by having a price discovery of

an economic value of a natural resource which is scarce in nature and finite in nature. I am happy that that discovery has been made after much campaigning".

14.28 Asked to state about the possibility of the service providers passing on the burden to the consumers by paying a huge amount to procure 3G/BWA Spectrum and effective measures ought to be taken by the DOT/TRAI to protect the interest of the consumers in such as eventuality, Shri Syngal responded as follows:

"In July, 2010 Mr. Sunil Bharti Mittal of Bharti Airtel was quoted in various newspaper articles that monthly Spectrum rental per subscriber for 3G/BWA services would be in the range of Rs. 700-900/-.

We carried out a back-of-envelope calculation to calculate monthly cost of Spectrum for a subscriber using such services.

Considering a 20 year mortgage model for Spectrum cost, monthly cost of Spectrum comes out to be Rs. 1,000 crore for 3G/BWA combined. We have considered a conservative rate of interest – 1 per cent – it could be 0.8 percent or 1.2 per cent also, depending upon market conditions. Similarly for BWA Spectrum, monthly cost of ownership of Spectrum would come out to be Rs. 380 crore. With a subscriber base of 20 million for BWA technologies, per subscriber cost of Spectrum comes out to be Rs. 170. And accordingly customers should not be unnecessarily charged on the basis of Spectrum cost. Extending this argument to 3G Spectrum as well, monthly Spectrum rent comes out to be in the range of Rs. 200-300 per subscriber for a subscriber base of 20 million. We are of the view that as subscriber base increases, monthly rental to be paid by subscriber would further decrease.

As demonstrated above, monthly cost of Spectrum to be borne by each subscriber should lie within the range of Rs. 200 to Rs. 300 per month. Nowhere has it come closer to Rs. 700-900 as cited by Mr. Mittal. If such costs are levied by operators, they are only interested in making windfall gains in the name of Spectrum auction and regulator must step-in to protect consumer interest".

14.29 On the same issue, TRAI stated that the 3G/BWA Spectrum has been allocated through the open and transparent bidding process. The operators have bid according to their business plan and market potential. In the scenario when there will be 4-5 operators for 3G services and 3 operators for BWA services in various service areas, it is expected that there would be adequate competition in the market which will ensure availability of variety of services at affordable prices. However, TRAI will keep a watch on the developments in this regard.

14.30 When the Committee desired to know whether the price generated through 3G Spectrum could be linked to the allotment of 2G spectrum, Shri Syngal submitted:

“.....However, I wish to state that if a similar approach (price discovery) was adopted in the case of the 2G spectrum as well, then the proceeds to the Government could have also been more or less of the same nature, if not more. May be slightly a little less or a little more which could be about close to another Rs.100,000 crore or so”.

14.31 In the same context, TRAI stated that in its recommendation dated 11th May, 2010, the Authority had recommended that the 3G prices be adopted as the ‘current price’ of Spectrum in the 1800 MHz band.

CHAPTER - XV

PERFORMANCE OF THE DEPARTMENT IN VARIOUS SCHEMES

(i) Rural Telephony

15.1 The Committee were informed that India was emerging as the fastest growing telecom market and had the second largest mobile network in the world. There was an average addition of 15 million subscribers per month and the subscriber base had reached more than 653 million as on June, 2010. As on the same date, the overall teledensity had reached 55 per cent whereas the rural teledensity stood as 25.66 per cent.

15.2 In the above context, the Committee desired to have a list of year-wise overall teledensity since 1996. The DoT furnished the following statement:

Year ending 31st March	Teledensity Overall
1996	1.28
1997	1.56
1998	1.94
1999	2.32
2000	2.86
2001	3.58
2002	4.29
2003	5.11
2004	7.02
2005	8.95
2006	12.74
2007	18.22
2008	26.22
2009	36.98
2010	52.73
May-10	55.38

15.3 Asked to furnish a comparative statement showing the targets and achievements on various Schemes, the following information was furnished to the Committee:-

Recent Developments in Telecom Sector-Growth in Telecom Sector

Item	Targets	Achievements (Upto May 2010)
Overall Teledensity	15% by 2010 (NTP 99)	55.38%

Rural Teledensity	4% by 2010 (NTP99) 25% by 2012 (11th Plan)	25.66%
Telephone Subscribers	600 million by 2012 (11th Plan)	653.9 million
Broadband	20 million by 2010 (11th Plan)	9.24 million

15.4 As would be seen from the above statement, the overall teledensity has increased from 5.11 per cent in 2003 to 55.38 per cent in May, 2010. In this context, the Committee desired to know the breakup of the urban and rural teledensity. In reply, the Department stated that rural teledensity had gone up from 1.57 per cent in March, 2004 to 21.19 per cent in December, 2009 while urban teledensity had gone up from 20.74 per cent in March 2004 to 110.69 per cent in December, 2009. As on 31st December, 2010 the rural teledensity was stated to be 31.22 per cent.

15.5 In the above context, the Committee desired to know the reasons for rural teledensity not keeping pace with the impressive growth in the urban areas. In reply, the Joint Secretary, DoT submitted in evidence:

"Sir, typically the growth began from the metros and then to the larger and smaller towns. These days the growth is mostly in rural areas because the metros and Class-A and Class-B towns have reached near saturation. Of the 15 million average growth per month which we have, good 50 per cent is coming from rural areas and they are catching up. The difference is coming down".

15.6 The Committee then queried whether there was any condition upon the service providers to provide certain number of rural concessions. In reply, the Joint Secretary, DoT stated:

"There have been in the past rural roll out obligations. At the same time, Sir, the policy has been – since it is mostly led by the private sector – that the companies would go to rural areas if they make profit. We also have the USO Fund to subsidize telecom infrastructure in rural and remote areas so that it makes business sense for the companies to provide services there. All this put together is accelerating rural tele-density and broadband services.

15.7 Asked to state the measures taken by the Department towards promoting rural teledensity, the Joint Secretary submitted:

"The basic step is that the USO Fund has a number of schemes. The mobile shared towers is one scheme which they have implemented in which they have set up 6000 plus towers in the country".

15.8 In a post evidence information the Department elaborating the measures taken for increasing rural teledensity, stated that the Universal Service Obligation Fund (USOF) has launched various schemes which provide access to telecommunications services to people in rural and remote areas. These schemes also contribute towards increase in Rural Tele-density. The latest status of USOF Schemes is given below:

- "(a) **Village Public Telephones:** As on 31.01.2011, **about 5,74,673 villages i.e. 96.81%** of the Census 2001 inhabited revenue villages have been covered with Village Public Telephones (VPTs). VPTs are being provided in remaining inhabited revenue villages under ongoing USOF schemes given below:
- (i) **VPTs under Bharat Nirman:** Agreements were signed with M/s BSNL in November 2004 to provide subsidy support for provision of VPTs in 62302 (revised from 66822) no. of uncovered villages in the country excluding those villages having population less than 100, those lying in deep forests and those affected with insurgency. The provision of VPTs in these villages has been included as one of activities under Bharat Nirman Programme. As on 31.01.2011, **61988 i.e. 99.50%** VPTs have been provided under this scheme.
 - (ii) **Newly Identified VPTs:** Reconciliation of the VPTs working in the inhabited villages as per Census 2001 was carried out taking into account the existing VPT and those provided under Bharat Nirman. All the remaining 62443 inhabited villages as on 01.10.2007 as per Census 2001 irrespective of criteria of population, remoteness, accessibility and law & order situations have been included for provision of VPTs with subsidy support from USO Fund under this scheme. Agreements in this regard were signed with BSNL on 27.02.2009. As per the terms and conditions of the agreement the VPTs installed between the periods 01.10.2007 to 26.02.2009 are also eligible for subsidy support. As on 31.01.2011, **46834 VPTs out of the 62443 i.e. 75% VPTs** have been provided under this scheme.
- (b) **Shared Mobile Infrastructure Scheme:** A scheme has been launched by USO Fund to provide subsidy support for setting up and managing 7363 number of infrastructure sites/ towers (revised from 7871) in 500 districts spread over 27 states for provision of mobile services in the specified rural and remote areas, where there was no existing fixed wireless or mobile coverage. Villages or cluster of villages having

population of 2000 or more and not having mobile coverage were taken into consideration for installation of the tower under this scheme. The agreements effective from 01.06.2007 were signed with the successful bidders in May 2007. As on 31.01.2011, 7251 towers i.e. about 98.48% have been set up under this scheme. The infrastructure so created is being shared by three service providers for provision of mobile services. As on 31.12.2010, 13866 BTSs (Base Transceiver Stations) have been commissioned by Service Providers".

15.9 The Committee asked Shri B.K. Syngal about the specific reason for which rural telephony was lagging and the proactive measures to be taken by the DoT and TRAI to give an impetus to rural teledensity. In reply Shri Syngal stated as follows:

"It is an appropriate observation that growth in rural telephony in India has lagged far behind the growth in urban telephony. Some of the key reasons for this include:

- Lack of backhaul connectivity
- Access services
- Availability of power
- Affordable and easy to charge handsets

15.10 Based on these constraints, it is not very difficult to comprehend that a rural cellular user is likely to face a multiplicity of problems like:

- Charging of handsets
- Multiplicity of charges
- Variety of batteries

15.11 There is an urgent need for the expansion of backhaul connectivity to reach various rural areas of India. It may also be noted that a large amount of backhaul already exists owned by organizations like RailTel, Power Grid, GAIL, BSNL etc., which could be mapped and integrated into a common network. Further, expansion of backhaul can be planned and USO funds can be deployed to achieve the same.

15.12 It may also be prudent to deploy USO funds towards the development of mobile handsets, which use regular pencil size batteries, either chargeable or disposable, so that they are easily available and the need for charging could be done away with.

15.13 In brief, some of the following steps can be undertaken to enhance rural connectivity:

- A study of existing short haul and long haul for mapping of existing untapped bandwidth.
- Mapping of existing Access Service Areas and gaps that need to be filled.
- Assessment of availability of prime power for Access Services and charging of handsets and need for creation of other infrastructure and handsets that run on pencil batteries.
- Development of a strategic planning framework based on the above mentioned mapping.
- Appointment of a specialized body or consulting organization to undertake the mapping and study and for creation of the strategic planning framework.

15.14 Both the TRAI and the DoT can work towards implementing some of the above to address the issues of rural telephony.

15.15 When the Committee desired to know from TRAI the reasons for low rural teledensity, the Authority replied that as per the UAS license roll-out obligation clause:

“LICENSEE shall ensure that:

- (i) At least 10% of the District Headquarters (DHQs) will be covered in the first year and 50% of the District Headquarters will be covered within three years of effective date of Licence.
- (ii) The licensee shall also be permitted to cover any other town in a District in lieu of the District Headquarters.
- (iii) Coverage of a DHQ/town would mean that at least 90% of the area bounded by the Municipal limits should get the required street as well as in-building coverage.
- (iv) The District Headquarters shall be taken as on the effective date of Licence.
- (v) The choice of District Headquarters/towns to be covered and further expansion beyond 50% District Headquarters/towns shall lie with the Licensee depending on their business decision.
- (vi) There is no requirement of mandatory coverage of rural areas. [Clause 34.2(a)]”

15.16 The above clause of Roll-out Obligation wherein the licensee needs to cover only 50% of the district headquarters and there is no mandatory requirement of coverage of rural areas is a major stumbling block in the expansion of rural telephony. The next major reason for non-expansion of rural telephony is lack of power in the rural areas. Those service providers providing services in the rural area have to run engine alternators to feed the power to the BTSs, which causes significant increase in the operational expenditure. Another important reason is the excessive utilization of the USO Fund on the wire-line telephony, where the Capex and Opex both are high. Besides these some other reasons 75 identified by TRAI are as below:

- Time taken for acquisition of Land for BTSs due to permission requirement from forest department/tribal areas or gram panchayats
- Requirement of permission from multiple jurisdictions for Right of Way
- Unavailability of cheap and fast backhaul connectivity
- Low Average Revenue per User (ARPU) (ARPU)

15.17 Asked to state the measures taken by TRAI to give an impetus to the rural telephony, the Authority replied that TRAI had been taking a various initiatives from time to time to boost the rural telecom penetration. Keeping the objectives of the growth of telecom services in mind, the Authority had made several recommendations to the Government in 2005, 2009 and 2010.

(ii) Broadband connectivity

15.18 The Committee were informed that the Eleventh Plan target for Broadband connection was 20 million by the end of 2010 whereas the achievement by May, 2010 was 9.24 million connections only. In this context, the Committee desired to know the reasons for less than fifty percent achievement of the target fixed for the Broadband connectivity. In reply, the Joint Secretary, DoT stated in evidence:

"Broadband is an area where we have not met our targets and there have been a number of reasons for that"

15.19 The Committee retorted that there might have been many reasons for that but whether it was not the duty of the Government to serve the impediments. In response, the Joint Secretary, DoT submitted:

"With the auction of Spectrum for 3G and Broadband wireless Access Service, one of the major hurdles which India faces compared to other countries which have gone in for the third-generation technology has been removed".

15.20 Asked to furnish the progress made after the auction of 3G & BWA Spectrum, the DoT, in a post evidence information furnished the following statement showing the state wise Broadband subscribers as on November, 2010.

Sl. No	State/Telecom Circle	Broadband subscribers (As on 30.11.2010)
1.	Andaman & Nicobar	5045
2.	Andhra Pradesh	992222
3.	Assam	67098
4.	Bihar (including Jharkhand)	146148
5.	Delhi*	972552
6.	Gujarat	656041
7.	Haryana	235201
8.	Himachal Pradesh	57422
9.	Jammu & Kashmir	46650
10.	Karnataka	1129392
11.	Kerala	699429
12.	Maharashtra (including Mumbai, Goa)	1847013
13.	Madhya Pradesh (including Chattisgarh)	418091
14.	North East**	37605
15.	Orissa	172405
16.	Punjab	523508
17.	Rajasthan	333165
18.	Tamilnadu (including Chennai)	1331956
19.	Uttar Pradesh (including Uttarakhand)	568936
20.	West Bengal (including Kolkata)	497971
21.	ALL INDIA ***	404
	TOTAL	10738254

*Includes Noida, Gurgaon, Ghaziabad and Faridabad

**includes Meghalaya, Mizoram, Arunachal Pradesh, Manipur, Nagaland & Tripura

***some of the companies have not provided the statewise break-up of their subscribers.

15.21 When the Committee desired to know the measures taken by the DoT to expand the broadband network, it was replied that the following efforts had been made by the Government in this regard:

- (i) **Recently concluded 3G/BWA Auctions:** Department of Telecommunications recently concluded highly successful auctions for the award of spectrum for 3G and BWA services. Overall proceeds from the Auctions, which have been of the order of Rs 106,000 crore. 3G auction was done for 3 or 4 blocks of 2x5MHz in the 2.1GHz band in 22 service areas, whereas BWA auction was held for, 2 blocks of 2x20MHz in the 2.3GHz band in 22 service areas.

The successful auction of 3G and BWA spectrum has laid a good platform for a push towards achieving pan India broadband infrastructure; eventually enabling the dream of providing “Broadband for all”. This vision demands a synergetic push across technologies (DSL, Fiber, Cable, and wireless), amongst telecom operators (public and private) and across the broadband value chain (device manufacturers, service providers, content providers & regulators); so as to provide this “universal service” to residents living anywhere in the country (urban or rural) and to the match the customer expectations across all segments (Enterprise, Government & Retail). Wireless Broadband technologies by leveraging (or sharing) the existing wire line infrastructure (available to the public and private operators) can immensely contribute to the broadband proliferation in the country.

- (ii) **Amendment of the Indian Telegraph Rule: Stream IV has been added under the Title “Provisioning of broadband connections to villages in a phased manner”. Under this following initiatives have been taken:**

- (a) **Rural Wireline Broadband Scheme:** For providing broadband connectivity to rural & remote areas, USOF has signed an Agreement with BSNL on January 20, 2009 under the Rural Wireline Broadband Scheme to provide wire-line broadband connectivity to rural & remote areas by leveraging the existing rural exchanges infrastructure and copper wire-line network. The speed of each of the broadband connections shall be at least 512 kbps always on. Under this scheme, BSNL will provide 8, 88,832 wire-line Broadband connections to individual users and Government Institutions and will set up 28,672 Kiosks over a period of 5-years, i.e., by 2014. As of December 2010, a total of 2,53,084 broadband connections have been provided in rural and remote areas.

- (b). **Rural Wireless Broadband Scheme:** The USOF is working on a scheme for providing financial assistance by way of subsidy for the wireless broadband active infrastructure such as BTS, by

utilizing the existing infrastructure available with the Telecom service providers. This scheme would provide broadband coverage to a majority of villages.

(c). Satellite Broadband connectivity for Rural & Remote Areas:

The USOF has identified 5000 villages (list available on the DoT website), which do not have any terrestrial connectivity. The formulation of the scheme, along with its financial modeling for subsidy disbursement, is in progress and it is envisaged to be rolled out during the current Five Year Plan (2007-2012). It is proposed for these rural & remote villages where terrestrial connectivity, i.e. wireline / wireless network, is not feasible. Initially, about 1200 such villages are envisaged to be provided broadband on this media.

(iii) USOF Schemes regarding General Infrastructure Augmentations: “Optical Fibre Network Augmentation, Creation and Management of Intra-District SDHQ-DHQ OFC Network in service area of ASSAM”:

With a view to provide sufficient back-haul capacity to integrate the voice and data traffic from the access network in the rural areas, i.e. villages, to their core network, USOF has taken initiative to strengthen the OFC network in the rural and remote areas. This scheme considers OFC Network augmentation between the blocks' HQ and Districts' HQ to begin with. The State of Assam has been taken up first for implementation.

(iv) Efforts made by BSNL: BSNL has already made 100% urban exchanges & more than 80% rural exchanges as broadband enabled. BSNL plans to cover 100% rural Blocks HQs. with broadband connectivity using Wi-max technology within next one year. Further, BSNL has launched offer to broadband upto 24 Mbps through VDSL, which is fastest in India.

15.22 The Committee then asked Shri B.K. Syngal as to the factors responsible for such a slow progress in the provision of Broadband connectivity and measures ought to be taken to increase it. In response Shri Syngal stated as follows:

"Demand is directly proportional to perceived utility and utility is determined by applications supported/run on the technology. We must not forget that demand factors are inter-related and not mutually exclusive. Another important factor that acts as a deciding point is pricing. If a service is appropriately priced, it is easily accepted by masses and thereby more applications are developed for such technology. But, if the technology is priced steeply, it will be classified as a premium product and will have limited acceptance and/or penetration.

15.23 We are of the view that, in urban areas broadband demand will pick up as and when broadband services are available on competitive basis. In rural and remote

areas the aim should be to make high speed internet connectivity available at reasonable rates quickly. One way to achieve the same could be by starting internet kiosks in remote villages so that the people at large will get a taste for the same. Satellite is the speediest option to start with. If mobile satellite service could introduce such facility, then even individuals can go in for their own connections. The advantage of mobile satellite service is that large antennas would not be required.

15.24 Further, if the consumers are able to transact their business with Governments (local, state and national), banks and other public utilities through internet, the demand will increase as commuting is becoming more and more difficult and expensive, whether in urban areas or from rural areas to the centres where such business can be transacted. Availability of information most frequently required by the users in the rural areas would be very helpful in improving the perceived utility of the access to Internet. Creation of such data bases in local languages is important. Text to voice translators would be very appropriate in rural areas.

15.25 Since Indian market is generally driven by lower-end of the consumer pyramid, another important criterion will be the end-consumer equipment used to operate broadband applications/technologies. By making broadband accessible on a variety of devices such as TV sets, projectors, mobile phones or nay other handheld/compatible device apart from conventional computer/laptop/notebook, will be imperative in addressing penetration issues and increasing perceived utility of the technology at large. In order to provide any service we must follow". Applying Technology to reach out to the Masses". We have too many licenses and regulations which retard the growth of any service".

15.26 When the Committee desired to know from TRAI the reasons for under achievement of the target in Broadband connections, TRAI replied that the primary reasons for low broadband penetration were as under:-

The primary reasons for low broadband penetration are given below:

Lack of support infrastructure: Provisioning of Broadband using Digital Subscriber Line (DSL) technology is predominant in India. 86% of total

broadband connections are using DSL technology. DSL connections are provided using copper cable of fixed line network. There are 36.18 Million fixed line connections as of June 2010. All wireline connections cannot be used to provide DSL. DSL connections can support good broadband speed upto maximum of 3-4 Km. Even if we consider that about 50% of available copper loop is capable to deliver broadband services and only 70% of these capable connections exist within 3 Km range from the exchange, we can provide good quality broadband to about 30-35% of fixed line connections through DSL (11-13 million).

Non Availability of 3G & BWA Spectrum: The other option to provide broadband is through wireless network. The auction for allocation of the spectrum for 3G and BWA has been completed recently and spectrum is being allocated to telecom service providers. As 2G technologies were not able to support broadband speed, the contribution of wireless technologies in providing broadband at present is dismal.

Difficulty in getting Right of Way: Optical fibre can be another option for providing the broadband. The complicated Right of Way (RoW) procedures and high RoW charges to lay telecom network dissuades service providers to venture into creation of optical fibre infrastructure to provide broadband services.

High Customer Premises Equipment (CPE) Cost: Broadband access requires PC/laptop or equivalent device at subscriber premises generally called Customer premises equipment (CPE). The cost of CPEs is high and not affordable to common masses. High Cost of 86 CPEs is one of the major impediments in spread of broadband connections.

Low Literacy: Use of PC/ laptop requires good knowledge of English as all the software commonly available in India is in English language. Low literacy is major concern to improve the broadband utilization. As per National Readership Survey, English literate population in India is 91 Million and total computer literate are about 87 Million. This is also contributing to low broadband penetration.

Non-availability of relevant content: Availability of local applications and content is important to generate broadband demand. Most of the contents available on the websites are in English and the English literacy rate in India is low (around 8%). Limited availability of content in vernacular languages is another reason for low broadband penetration.

15.27 The Committee then asked about the measures were recorded by TRAI, in accordance with the powers conferred on it, to increase the broadband penetration. In reply, it was stated that keeping in view the importance of broadband TRAI has taken number of steps for increasing growth of broadband. In order to ensure rapid spread of broadband both in the urban and rural areas TRAI has issued a consultation paper

on “National Broadband Plan” on 10th June, 2010, covering various aspects such as definition of broadband, infrastructure requirements, supply and demand, affordability and Right of Way.

15.28 On being asked the measures taken by TRAI to ensure quality of service in the broadband provision, TRAI stated that ensuring quality of service has been the main concern of TRAI. In order to provide the proper Quality of Service to the broadband subscribers, TRAI has taken the following steps:

- a. To improve Broadband services being provided by service providers, TRAI has issued “Quality of Service of Broadband service Regulations, 2006” on 6th October, 2006 (11 of 2006) and Telecom Consumers Protection and Redressal of Grievances Regulations, 2007 (3 of 2007).
- b. TRAI has been monitoring the performance of broadband service providers against the benchmark for the various quality of service parameters laid down by TRAI in the above said Regulations, through the quarterly Performance Monitoring Reports (PMRs) submitted by the service providers for different licensed service areas. Wherever there has been deficiency in meeting these benchmarks, the matter is taken up with the service providers for remedial action.
- c. To monitor the performance of the service providers and to verify the Quality of service performance data submitted by the service providers, TRAI has appointed independent agencies for following works:
 - a) Audit and Objective Assessment of Quality of service once in a year for each service area/circle.
 - b) Assessment of Implementation and Effectiveness of Telecom Consumers Protection and Redressal of Grievances Regulations, 2007 and Customer Perception of Service through Survey. The reports received are uploaded on TRAI website for information of the public.

(iii) Mobile Number Portability (MNP)

- The Mobile Number Portability (MNP) allows subscribers to retain their existing mobile telephone number when they switch from one access service provider to another irrespective of mobile technology or from one technology to another of the same or any other access service provider.

- Portability benefits subscribers, encourages improvement in quality of service through increased level of competition between service providers, rewarding those operators having better customer service, network coverage, and service quality.
- Detail of the Companies who have been granted licence(s) for MNP service are as below:
 - **M/s. Syniverse Technologies (India) Pvt. Ltd,** for MNP Service **Zone-1** (containing Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Maharashtra, Punjab, Rajasthan, Uttar Pradesh (E), Uttar Pradesh (W), Delhi and Mumbai Service Areas).
 - **M/s. MNP Interconnection Telecom Solutions India Pvt. Ltd.,** for MNP Service **Zone-2** (containing Andhra Pradesh, Assam, Bihar, Karnataka, Kerala, Madhya Pradesh, North East, Orissa, Tamil Nadu including Chennai, West Bengal and Kolkata Service Areas).
- TRAI issued the Regulation on MNP including the business process on 23rd September 2009. TRAI issued the regulation on Tariff Order for MNP on 20th October 2009.

15.29 Elaborating the process of initiating the MNP scheme, TRAI stated that in March, 2006, in its *suo-motu* recommendation to DoT, it recommended implementation of Mobile Number Portability in the country. A time frame of 12 months between the acceptance of recommendation by the Government and launch of this facility was recommended. It was also recommended that MNP should be available to mobile subscribers tentatively by 1st April 2007. DoT accepted TRAI's recommendations in December, 2007. Subsequently, a steering committee consisting of representatives from the industry, Telecom Engineering Centre(TEC) and DoT under aegis of TRAI. After a series of meetings, TRAI submitted the Draft Request for Proposal(RFP) to DoT in April,2008 for selection of MNP operator in the country. DoT awarded MNP licenses to two companies in March,2009. Thereafter, TRAI issued draft regulations on MNP on 30th June,2009 and a consultation paper on determination of 'Per Port Transaction Charge, Dipping Charge and porting charge' on 22nd July,2009 for the comments of the stakeholders.

- Based on the inputs by the stakeholders, TRAI issued the 'Telecommunication Mobile Number Portability Regulations, 2009' on 23rd September 2009, laying down the basic business process

framework for implementation of Mobile Number Portability (MNP) in the country. TRAI also issued the 'Telecommunications Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009' on 20th November 2009, wherein, it fixed the per port transaction charge as Rs 19/- . Further, TRAI also fixed a ceiling limit of Rs 19/- as porting charge, payable by the subscriber to the recipient operator (to whom the subscriber moves after 95 porting). The porting charge of Rs 19/-(as ceiling) has been appreciated by the consumers and consumer groups. For the implementation of MNP, it is necessary that the network of all the service providers in the country is ready and tested. For this purpose various activities are required to be carried out by the operators including technical augmentation and up gradation of their existing networks, carrying out required installation and verification tests, establishing links with MNP operators and conducting inter-operator tests. After the service providers are ready with their own inter-operator test results, a complete acceptance test (A/T) is to be carried out by the DoT across the networks of all the concerned service providers in all the service areas. DoT has been monitoring the testing status of MNP in both the zones. The dates has been repeatedly extended by DoT as testing is yet to be completed. As per the service provider reports, almost all the service providers are at various stages of testing except BSNL & MTNL. While BSNL has yet to start testing, as its MNP gateway is not ready, MTNL is still in the process of placing the purchase order.

15.30 The Committee asked DoT to state the original and revised deadline for the introduction of the MNP scheme. In reply, the then Secretary, DoT stated in evidence that the original deadline was 31st March, 2009 for Delhi and 31st December, 2009 for the rest of the country. The revised deadline was stated to be 31st October, 2010.

15.31 Asked to state the reasons for delay in commencing the scheme, the former Secretary, DoT stated that there was delay in procuring the gateway equipment on the part of BSNL and MTNL. He further stated:-

"It has to be done in totality. There is a lot of testing involved in this".

15.32 The Committee then asked, TRAI whether the Authority had ever impressed upon the DoT to accelerate the implementation of the MNP scheme. In reply, TRAI stated that regarding the Regarding the timely implementation of MNP, TRAI vide its letter dated 7th August 2009, requested DoT for expediting the process of implementation of MNP, in view of considerable time that may be taken by the service providers to procure and commission gateways. It was highlighted that BSNL might

take around 6 to 9 months for procurement and commissioning of MNP gateways. Further, TRAI vide its letter dated 30th September 2009 short listed the pending issues such as Location Routing Numbers, Interface specifications and testing schedules on which action is required from the DoT/TEC. TRAI vide its letter dated 10th February 2010 to DoT raised the issues regarding delay in procurement of interface equipment by PSUs, delay in establishing of connectivity by telecom service providers with MNP service providers and handling of mobile numbers under lawful interception. Subsequently, TRAI in its latest communication dated 19th July, 2010 has again brought to the notice of DoT that repeated extension of timelines of MNP implementation is not advisable and it requested DoT not to extend the deadline further.

(iv) Mobile Virtual Network Operator (MVNO)

- The mobile Virtual Network Operator (MVNO), in a service area in a service area, is an entity that does not have spectrum of its own for access services but is licensed to provide access services to its customers through an agreement with any licensed access provider. The MVNO should not possess spectrum for access services in any manner including licensing of spectrum.
- TRAI submitted its Recommendations on Mobile Virtual Network Operators (MVNOs) on 6th August 2008. The said Recommendations of TRAI was examined in the Department and were considered and approved subject to some modifications. A press release in this regard was given on 25/02/2009.
- Some recommendation of TRAI were referred back to them vide letter dated 24th February 2009 seeking reconsidered views of TRAI. The reconsidered views of TRAI on the above matter were received by the Department vide TRAI's letter dated 12th March 2009. The same were considered by the Telecom Commission. The in-principle decision on introduction of MVNO and its broad policy framework has been taken in DoT.
- While considering the guidelines for MVNO it has been decided to seek the TRAI's opinion in view of the recent recommendation of TRAI on Spectrum Management and Licensing Framework regime after they are finalized by the Government.

15.33 Asked to state the basic objective of the MVNO scheme, a representative of the DoT stated in evidence:

"The virtual operators will purchase the bulk minutes from the main operators and they can resell those minutes under their own brand, under their own tariff plan and they can issue the bills also and they will have better marketing operator. The operator who wants to outsource the marketing, they can do it through virtual operator because virtual operator will take money and they will have to be licensed and controlled by the Government so that there are no fly-by-night operators".

Supplementing his colleague, another representative stated:

"The tower and network remains with the original operator. The idea behind this is, a large operator may not be able to give specialized services. For example, if farmers need some special information, MVNO may give that specialized information. That is why this concept came in the world, but the responsibility remains with the main operator".

15.34 The Committee then asked if a wrong information was furnished to the farmers, fishermen etc. by the MVNO whether the main operator would be responsible for that. In reply, the Additional Secretary, DoT stated that it was a part of the agreement that the main operator would remain responsible for everything.

15.35 Asked to state as to when the Department was expecting to finalize the draft guidelines, the Secretary, DoT submitted:

"When new TRAI recommendations are finalized, they will also be finalized. It will take about 6 months, if not earlier".

15.36 When the Committee desired to know from Shri B.K. Syngal as to how the MVNO scheme would be useful for the subscribers and commercially be viable for the main operators. Shri Syngal in a written note submitted as under:-

Licensing and Regulatory Framework:

Presently, there is no license category covering MVNO concept. A separate licensing and regulatory framework is required to ensure that subscribers are not affected by any dispute between MVNO and MNO. In our view, since MNO primarily work towards providing highly focused value added services,

regulatory framework applicable to Value Added Service Providers to be applicable to MVNO. At the same time, since MVNO issues self-branded SIM and is responsible for billing thereby having direct interface with subscriber, additional caveats must be introduced ensuring continuity of service and national security aspects. Framework must also ensure that in case of dispute between MVNO and MNO, subscribers are not left stranded. Upon exit of MVNO from business, subscribers must become responsibility of MNO.

Infrastructure:

Internationally, various models are being followed by MVNOs depending upon their business objective. MVNO usually sets-up its own infrastructure for billing, customer care, VAS and other user specific content. However, MVNO must not be allowed to set-up network infrastructure in any way. Spectrum access can only be done by licensed service providers and not by those utilizing spectrum.

Service Obligation:

MVNO provides interface to subscribers while accessing network. As such all the QoS parameters are to be duly applicable to MVNO as to MNO. Also, MVNO does not access spectrum, hence roll-out obligations are not applicable to MVNO.

Revenue Sharing:

Since MVNO is similar to a refined VAS provider, entry fee applicable to MVNO must be same as that applicable to VAS provider. At the same time, MVNO provides direct interface to subscriber, as such additional fee should also be charged to ensure only serious players enter market. Since MVNO buys air-time from MNO and then distribute to subscriber with additional services, spectrum usage charge is already taken into account of respective MNO. It must be ensured that no double taxation happens.

Cross-Holding and Merger & Acquisition:

Regulatory framework must ensure that MNO-MVNO follow a parent-child relationship. MNO to be permitted to have multiple MVNOs, but MVNO can only be associated with a single MNO. Moreover, MNO must not be obligated to have MVNO. This will ensure, cross-utilization of spectrum does not happen. Moreover, let MVNOs having same MNO be allowed to merge/acquire but in case MVNOs have different MNOs resulting entity be allowed to associate with a single MNO.

(v) EMF Radiation by Towers

15.37 Electric fields are created by differences in voltage: the higher the voltage, the stronger will be the resultant field. Magnetic fields are created when electric current flows: the greater the current, the stronger the magnetic field. The Electromagnetic field (EMF) can be viewed as the combination of an electric field and a magnetic field.

15.38 Base Transceiver Stations (BTS) of Mobile Communication Network produce electromagnetic fields. These RF fields are used to transmit information over long distances. Similarly Mobile Handsets also produce Electromagnetic radiations.

15.39 Frequency of the signal radiated from these sources determines important characteristics of electromagnetic fields. The electromagnetic fields emission from mobile handsets and BTS are found at relatively low end of electromagnetic spectrum and the energy carried by them are unable to break chemical bonds in molecules and are called non-ionizing radiation.

15.40 Studies have shown that environmental levels of radiofrequency Electromagnetic radiations routinely encountered by the public are far below the levels needed to produce significant heating and increased body temperature. At relatively low levels of exposure to Electromagnetic fields, that is, field intensities lower than that would produce measurable heating, the evidence for production of harmful biological effects is ambiguous and unproven.

15.41 Electromagnetic radiation in commercial land mobile service in Telecom Sector can be classified into two categories:

- (1) **Radiation from Base Transceiver Stations (BTSSs)** of GSM, CDMA, 2G, 3G for Mobile Communication Network and of Wimax for Wireless Broadband Access.
- (2) **Radiation from Mobile Handsets** used for communication and broadband access which are held in close contact with the user public.

International Standards on Electromagnetic Radiation in Telecom Sector:-

15.42 International Commission on Non-Ionizing Radiation Protection (ICNIRP) is an international independent scientific organization that provides guidance and advice on the health hazards of non-ionizing radiation exposure.

15.43 ICNIRP has published guidelines for limiting exposure to time varying electromagnetic fields in the frequency range up to 300 GHz. Its guidelines are endorsed by the World Health Organization (WHO).

15.44 Studies in several countries under the World Health Organization (WHO) prove that the emissions from the mobile phone towers/networks are causing harmful effects on human beings. The DoT has been adopting the radiation guidelines of International Commission on Non-ionizing Radiation Protection (ICNIRP).

15.45 Asked to state the measures taken by the DoT for implementation of the norms for EMF radiation from BTS, the DoT stated that on 4th November, 2008 the CMTS/UAS licences were directed to implement the radiation norms as prescribed by the ICNIRP. Similarly, test procedure to self certify/test the radiation levels were issued on 9th November, 2009. The DoT further stated that instructions have been issued to the service providers to self certify all the existing BTSs by 15th November, 2010 and any new BTS was to be put in service only after self-certification.

15.46 In the above context, the Committee asked in evidence whether it was appropriate to entrust the operators with the responsibility of self-certifying the radiation from the BTS. In reply, a representative of the DoT submitted:

".....The self-certified results are audited".

15.47 Asked to state specifically whether there was any inter-ministerial group comprising of the DoT, the Ministry of Health and Family Welfare and the Ministry of Environment and Forests to study and monitor the harmful radiation of the EMF. In reply, the representative of the DoT submitted:

"At present we do not have any Committee other than auditing the self-certified results and evaluating it by ourselves through our technical units. We do it in two parts. One is our own investigation and the other is auditing the self-certified results".

15.48 When the Committee desired to know about the own investigation of the DoT, the representative of the DoT replied:

"We, *suo-motu*, go to different areas to see if the radiation level has exceeded".

15.49 Asked to state the mechanism developed by the DoT to personally monitor the radiation level, the former Secretary, DoT submitted:

"We will accept the suggestion of the hon. Chairman and we will go in for an inter-Ministerial group to monitor this. As such, it is purely a Departmental thing. I agree that the number is very miniscule".

15.50 The Committee then asked whether there was any monitoring mechanism at all. In reply the Secretary, DoT submitted:

"I agree with you that practically, the monitoring mechanism I would use the word – is meager. So, the little mechanism that is there is only doing it".

15.51 The Committee queried if there was any monitoring mechanism at all, the number of complaints received by the DoT in this regard and the action taken thereon. The former Secretary, DoT could not give any satisfactory reply. The Committee desired that a note in this regard may be furnished to them later on.

15.52 In a post-evidence information the Committee were apprised that so far, nine complaints from individuals have been received in DoT and one in TERM Cell, J&K regarding fear about the alleged harmful effects of radiation emanating from telecom towers. These complaints have been forwarded to the concerned service providers for their awareness and appropriate remedial actions.

15.53 Apart from above, there are eight court cases, pending before various High Court, where the petitioners (individuals) have also raised similar concern about the harmful effects of mobile tower radiation.

15.54 The Committee then desired to know from TRAI as to whether the Authority had been entrusted with the task of studying the harmful effects of the EMF radiation. In reply, TRAI stated as follows:

"No, TRAI has not been entrusted with any role and responsibility to evolve any mechanism to check effect of EMF Radiation. However, considering its importance to customers, TRAI has issued a pre-consultation on 'Telecom Towers and related issues' on 5th February, 2010 including the issue of ill effect of EMF radiations. A deeper study is required to analyze the effect of EMF radiation on health and environment. TRAI is examining the feedback of stakeholders and is contemplating to come out with a consultation paper. Outcome of the consultation is expected by end this year".

15.55 Asked to state categorically whether the extant practice of operators self certifying the safe radiation parameters was appropriate, TRAI replied that In India, there are more than 3,00,000 telecom towers. Monitoring the EMF radiation level of these telecom towers is a challenge. Till some method to regularly collect the EMF radiation signals is devised, self certification seems to be an option.

15.56 TRAI further stated that procedures, Instructions, guidelines for implementation of radiation norms have already been prescribed by DoT and TEC. However, TRAI is contemplating to come up with a consultation paper on various issues related to tower including radiation issue. Based on the outcome of consultation paper, recommendation on measures will be submitted to government.

15.57 As regards the international practice and monitoring mechanism evolved, TRAI submitted as under:

"Internationally, agencies like International Commission on Non-ionizing Radiation Protection (ICNIRP) and Institute of Electrical and Electronics Engineers (IEEE), have published their reports giving acceptable safe limits of electromagnetic radiations from telecom towers. Majority of Countries including India follow the radiation limit prescribed by ICNIRP like UK, Australia, Japan, New Zealand, South Korea, France, Sweden, Norway, Philippines, Ireland and Finland. However, some countries like US, Russia, Turkey has prescribed their own radiation limit which is generally lower than the ICNIRP limit.

Monitoring Mechanism: Internationally, different countries have adopted different monitoring mechanism. In US, FCC has measurement instrumentation for evaluating RF levels. FCC does not perform RF exposure investigations unless there is a reasonable expectation that the RF exposure limits may be exceeded. In UK Ofcom is conducting the audit of base station by evenly sampling across the UK and results are made available on their website. In Australia, radiation level is measured based on random selection of towers. Penalties are imposed, in case of non compliance. In Brazil, on site inspection to verify compliance is scheduled. In Ireland, Communication Regulator arranges for NIR surveys on sample basis of nationwide licensed transmitter sites. In some countries, field survey is carried out to measure the radiation power in worst condition through agencies like INCIRP, ARPANSA, WHO etc".
