OBSERVATIONS/RECOMMENDATIONS

I INTRODUCTORY

Before the mobile telephony was introduced in India there was hardly any commercial value of Spectrum, it was rather practically nil. The demand for Spectrum was felt in 1994, when in accordance with the National Telecom Policy (NPT-1994), the Telecom Service Sector was opened up for the private sector participation to compliment the efforts of the Department of Telecommunications. The licensing of Cellular mobile services was done in two phases. In the first phase two Cellular Mobile Telephone Service (CMTS) licences were awarded in November 1994 to Aircel, Bharti Airtel, Loop Mobile and Vodafone in the four metro cities of Delhi, Mumbai, Kolkata and Chennai on a Beauty Parade basis. It means that the price of Spectrum was to be fixed in such a manner so as to ensure its optimum utilization by awarding it to the user(s) who would score the highest against a group of the extant criteria such as rural coverage or the fulfillment of roll out obligations. Although, licence fee for the above two licences was predetermined, Spectrum charges and royalty for use of Spectrum were payable separately. In the second phase, two CMTS licences were awarded in December, 1995 to Bharti, Idea, Reliance and Vodafone in 18 Telecom Circles/Service areas based on a competitive bidding process. The industry pleaded that they could not attain large growth of business and they were not able to achieve the expected returns on their huge investments, the Commitment for high licence

fee could not be honoured. The Government revisited the extant Telecom Policy and thus the New Telecom Policy, 1999 was formulated which *inter-alia* 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. One of the most important features of the NTP – 1999 was that the Government would invariably seek the recommendations of the Telecom Regulatory Authority of India (TRAI) on the number and timing of new licences before taking any decision on the issue of new licences in future. Thus, the Government made it clear that the entry of more operators in a Circle/Service area was required to be based on the TRAI's recommendations. The concept of revenue sharing regime was brought in with a view to providing relief to the Access Service Providers i.e. Cellular Mobile Service Providers, Fixed Service Providers and Cable Service Providers. The revenue sharing regime contemplated payment of one time entry fee and licence fee based on revenue share. In accordance with it, the Government allowed the existing licensees to migrate from the fixed licence fee regime under NTP – 94 to a revenue sharing regime under NTP – 99. All the existing BSOs and CMSPs migrated to the revenue sharing regimes w.e.f. 1 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 per cent, 10 per cent and 8 per cent of the AGR depending on the size of the Circle/Service Area which was further revised to 10 per cent, 8 per cent and 6 per cent. This revenue share was payable

quarterly. Apart from the licence fee, the Operators were also required to pay onetime non-refundable entry fee before signing the new licence agreement. Thus, in accordance with the provisions of NTP-99 three types of fees were prescribed viz., (i) 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. In 1999-2000, MTNL and BSNL were awarded CMTS licences as the third mobile operator. In September-October 2001, 17 new CMTS licences were issued on a competitive bidding process. The allotment of Spectrum was assured under the licence and no separate upfront fee was charged for Spectrum. In 2003 the Unified Access Service (UAS) Licensing regime was introduced which 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 fee. As per the condition of the 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 be subscriber base achieved by an operator. 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. Based on a reference made to the TRAI in April 2007 and TRAIs consequent recommendations of 'no cap' on the number of players in a service area and introduction of

dual technology licenses, the DoT issued 35 dual technology licenses and 122 UAS Licences in 2007-08. The procedure followed by DoT for issue of these 157 licences smacked of serious irregularities leading to staggering loss to the exchequer. The Committee's detailed examination of this subject based on oral depositions by several witnesses and scores of written documents obtained from various sources has revealed gross violation of the established norms, rules and procedures, dereliction of duties on the part of Ministries/Departments concerned, scant regard, bordering on contempt, for considered suggestions/opinions of the people/organization that mattered etc. which are highlighted in the succeeding paragraphs. The Committee have also taken stock of the progress in the rural telephony, broadband connection, harmful effects of the EMF radiation etc.

IGNORING THE ADVICE OF THE MINISTRY OF LAW & JUSTICE

The Committee note that consequent upon the recommendations of TRAI in August, 2007 for putting `no cap' on the number of players in a circle/service area, 575 applications were received for UAS licences as of the cut-off date i.e. 1st October, 2007. In order to handle such a heavy rush of applications in a fair and equitable manner which would be legally tenable, the Member(Technology), DoT wrote a letter to the Secretary, Department of Legal Affairs seeking legal opinion from the Attorney General/Solicitor General and suggesting four alternatives. The Law Secretary, opining that the issues were too broad and had to be refined further, put up a note to the Minister of Law & Justice for his consideration. The Minister, agreeing with the Law Secretary, suggested for the constitution of an Empowered Group of Ministers to consider the whole issue. In response, the Minister of Communication & Information Technology in his letter to the Prime Minister stated that the suggestion of the Law Ministry was totally out of context. The Committee deplore the intemperate and indecorous manner in which the considered advice of the Ministry of Law & Justice to refer to the Empowered Group of Minister such an important matter like following a fair and transparent procedure for handling the large number of application for grant of UASL was termed as out of `context' by the Minister of Communication & Information Technology. The DoT could not furnish any cogent explanation for setting aside the advice of Law Minister nor could they furnish the file containing the said draft letter.

It is really surprising and shocking that the legal opinion which was sought by the Department on its own volition was rejected by its Minister. Needless to say, by doing so the benefits of the discussion on important telecom matters in an inter-ministerial forum were deliberately stymied. The Committee are of the considered opinion that seeking legal opinion to handle the large number of applications in a fair, transparent and equitable manner was a sound and rational decision but the manner in which the considered advice of the Law Minister, on being found unpalatable, was turned down, only shows the malafide intentions of the then MOC&IT.

The Committee are shocked to note that contrary to the advice of Ministry of Law & Justice, the Ministry of Communication & Information Technology had a direct reference made to the Solicitor General on 7.1.2008 seeking his opinion on the Press Release which was later issued on 10.01.2008 to which the SG opined that the proposed course for issue of LOIs `is fair and reasonable' and `make for transparency'. What is intriguing is that the SG gave advice on a matter for which the Ministry of Law & Justice had advised for reference to EGOM. The Law Secretary, while deposing before the Committee has categorically stated that seeking direct opinion of the SG bypassing the Ministry of Law & Justice is not in line with the rules and procedures prescribed in this regard. The Attorney General himself is of the opinion that the Minister, should not make references to any Law Officer directly. But it is quite intriguing that the Ld. Attorney General, when he was the Solicitor General, has had himself entertained a direct reference made by the Minister of

Communications & IT. The Committee, therefore, recommend that a serious view must be taken in the matter. The Committee also recommend that the advice given by the Law Ministry particularly on important matters having wide ranging implications must be taken with the seriousness that it deserves and where rejected, reasons must be furnished to the Law Ministry under intimation to the Cabinet Secretariat. Further, Ministry of Law & Justice need to issue appropriate instructions and procedure so that all cases seeking advice/opinion of Attorney General/Solicitor General are routed through the administrative Ministry only. A serious view must be taken against any deviation from the established procedure and stringent action must be taken against officials who violate the prescribed procedure.

The Committee note that in his letter dated 26th December, 2007, the Minister of Communications & IT had apprised the Prime Minister that his discussion with the External Affairs Minister and the Solicitor General had enlightened him to take a pre-emptive and proactive decision on the issue of UAS licences/2G Spectrum. But a perusal of the then External Affairs Minister's note to the Prime Minister reveals that he has underlined the responsibility of the Government to frame, revise and change the policy in a transparent manner and then follow it in letter and spirit. He has also categorically remarked that while keeping on issuing new licences, the criteria for grant of the licences may be strengthened and put in public domain at the earliest. Thus, it is evident that he did not give any wrong advice to the M/o Communications & IT who in turn

distorted the facts while writing to the Prime Minister. Similarly, the Attorney General has clarified in a written note that he has never verbally or in writing concurred with any proposed course as claimed by Shri A. Raja in his letter dated 28th December, 2007. Thus, neither the then External Affairs Minister nor the then Solicitor General had supported the then M/o Communications & IT's claim of being enlightened by them.

The PMO's reply that no suggestion of the Law Minister to set up an EGOM was received by them does not convince the Committee in view of the fact that the Communication Minister himself apprised the Prime Minister of the Law Minister's view alongwith his own view thereon. It implies that the PMO was very much aware of the Law Minister's suggestions, but the counterview of the Communication Minister got overriding preference to the Law Minister's views for some unknown reasons and thus no effort was made by the PMO to initiate the process of the constitution of the EGOM. The PMO certainly either failed to see the forebodings or was rendered a mute spectator.

NOT CONSULTING THE TELECOM COMMISSION

The Telecom Commission was set up by the Government in 1989 with the objective of formulation of the policies of the DoT for approval of the Government as well as to oversee the implementation of the policies and preparation of annual budget of the DoT. Unfortunately, an artificial and convenient division has been created by inclusion of full-time and part-time members of the Commission. The permanent members of the Commission including the Chairman are employees of the DoT and the presence of three permanent members constitutes the quorum. The other members, part-time but permanent Government servants, are Finance Secretary, Industry Secretary, Secretary IT and Secretary, Planning Commission. The Committee note that as per the Rules of Business of the Telecom Commission 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 are to be brought before the Commission. But the Committee are constrained to find that the TRAI recommendations of 2007, which were very crucial from the perspective of the management of the Telecom Sector and Spectrum Management, were never placed before the Telecom Commission. The DoT's reply that it was discussed in the internal Telecom Commission on 10th October, 2007 is unacceptable in view of their own admission that the Resolution, Rules of Business and Rules for the Transaction of Business of the Telecom Commission do not contain any reference to `Internal', 'External' or `Full' Telecom Commission; only the term

`Telecom Commission' finds a place. Thus, it is established that the prevalent practice has been developed in the DoT as a camouflage to take very convenient decisions through the permanent internal members of the DoT and avoid uncomfortable decisions in the entire Telecom Commission where the part-time but independent members, particularly the Finance Secretary, would be raising objections. This fact has been corroborated by one of the former Secretaries of the Department of Telecommunications. The Committee strongly disapprove such a dubious practice and impress upon them to henceforth discard distinguishing between the full time and part-time members or for that matter between internal or full Telecom Commission as the Commission is one entity.

The Telecom Commission was set up for fair and independent working of the DoT but the manner in which the Telecom Commission is operated, it has been reduced to a mere charade rendering its very integrity questionable. The Committee, therefore, recommend suitable amendments in the Business Rules so that it is made mandatory to refer all matters relating to policy and change in policy or procedure to the Telecom Commission by doing away with the procedure of internal or full commission for their approval. Further, all such policy or procedural changes once approved by the Commission must be notified after due approval of the Cabinet. The Committee observe that one of the convenient methods adopted by the Department to keep the part-time members at bay is to put in a clause in the Business Rules to consolidate the quorum with the presence of three full time members only. The Committee exhort the Government to

revisit the Transaction of the Business Rules of the Commission with a view to revising the quorum rule making the presence of the Finance Secretary, or his authorized representative not below the rank of Joint Secretary in the Department of Economic Affairs, as essential condition for constituting the quorum.

ARBITRARY CHANGES IN THE CUT-OFF DATE

The Committee note that in August, 2007 TRAI had recommended that there be `no cap' on the number of licences in any service area and the recommendation was accepted by the Government in October, 2007. But, circumventing the TRAI recommendation and bypassing its own decision of the acceptance of the recommendation, the DoT capriciously for no valid reasons, put an artificial cap on the number of licences to be issued through its Press Release dated 24th September, 2007. The Department reasoned that at the time of reference to TRAI in April, 2007, only 53 applications were pending but after TRAI's recommendation in August, 2007 there was a sudden spurt in the number of applications and hence the Department decided to stop receiving further applications keeping in view the likely availability of Spectrum. The Department's reasoning is unacceptable because TRAI's August, 2007 recommendation was accepted by the DoT in October, 2007 by which time there must have been some indications of the number of applications that would be coming. Moreover, the Authority was not consulted on the matter as its recommendations were not considered in the entirely nor the issue was placed before the Telecom Commission and a cut-off date was announced. Astonishingly, nobody in the DoT even thought of it as is corroborated from the fact that no material on record was available with the Department to show any initiative in this regard. What is worse is that the cut-off date of 1st October, 2007 was advanced to 25th September, 2007 through a Press Release dated 10th January,

2008 in a dubious decision taken by the Minister on 2nd November, 2007. Such a decision was taken without the approval of the full Telecom Commission which was scheduled to meet on 9.1.2008 but the meeting was deliberately postponed to 15.1.2008 anticipating objections. What is more important is that it was so done despite the advice of the Prime Minister contained in his letter dated 2.11.2007 emphasizing allocation of spectrum and revision of entry fee in a fair and transparent manner. The CBI written replies show that the office of Telecom Minister was personally monitoring the receipt of applications and only after ascertaining the receipt of certain companies by 24.09.2007, the cut-off date was advanced arbitrarily. The High Court of Delhi in the S.Tel case had ruled that "there cannot be a change in the rule after the game has begun" and that the DoT "cannot be allowed to arbitrarily change the cut-off date and that too without any justifiable reasons". On this question whether this cut-off date was announced on the basis of availability of spectrum, the former Secretary who has since been charge sheeted, admitted that there was no synchronization and no scientific analysis nor did he see any file regarding availability of spectrum. Upon the scrutiny of written and oral evidence and the perusal of the findings of the OMC, the CBI and the judgment of the High Court of Delhi and the refusal of the Supreme Court on appeal by the DoT to interfere with the orders of the High Court holding the advancement of the cut-off date as arbitrary and unjustifiable, the Committee refrain from making any further comment. Now that the CBI is investigating the case under the Supreme Court's monitoring, the Committee believe that the investigating agency will take the case to its logical conclusion. In

the meantime, the Committee urge upon the Department to desist itself from any gross irregularity in any future allotment of licence/spectrum in larger interest.

The Committee are perturbed to note the audacious reply of the Department that neither the cut-off date of 1.10.2007 was pre-poned nor were the applications for grant of UAS licences which were received after 25.09.2007 rejected. The fact remains that 343 applications, received between 26.09.2007 and 1.10.2007, are still pending with the Department and applications received only upto 25.09.2007 were considered for grant of UAS licence. The Department therefore owe an explanation for their misleading statement.

From the written reply furnished to the Committee, it is found that the then MOC&IT on 2nd November, 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 60-65MHz Spectrum still available for the 2G services. When the Department was asked to explain the position, they informed that there was a typographical error in the material furnished to Committee. The Committee find the plea of typographical error self-contradictory in view of the availability of Spectrum as indicated in the letter dated 02.11.2007 of Ministry of Communications & Information Technology to the Prime Minister and therefore untenable. The DoT therefore, must fix responsibility for such contradictory information furnished to the Committee.

Another glaring discrepancy has been noticed in the Department's noting *vis-a-vis* the Communication Minister's letter to the Prime Minister. The Committee find that file noting of the Department did not anywhere mention the availability of the Spectrum in the 900 MHz band whereas the Minister's letter to the Prime Minister categorically indicated the availability of 60 to 65 MHz of 900 band spectrum. Clarifying the position, the Department submitted that it was expected that Defence would release 60 to 65 MHz of Spectrum in the 900 band. In the context of S. Tel's case, the Department have informed the Committee that the company's conditional offer did not merit any consideration since it was in respect of Spectrum in the 900 MHz band which was not available. Thus, it is evident that when the Minister wrote to the Prime Minister, Spectrum in 900 MHz band was not available and just in anticipation of vacation of Spectrum by Defence, he had the temerity to mislead the Prime Minister. The Committee castigate the dubious role played by the officers concerned in the Department and the Minister who misled the Prime Minister on such important matters of allocation of the scare natural resource. The Committee, therefore, recommend stringent punitive action against all those responsible for furnishing wrong information to Parliament, suppressing facts and deliberately misleading the Prime Minister. The Committee also be apprised of the measures since instituted to prevent such recurrences.

OVERRULING THE VIEWS AND CONCERNS OF THE MINISTRY OF FINANCE

The Committee note that one of the Terms of References (ToR) of the Group of Ministers (GoM) constituted on 10 September, 2003 was to recommend how to ensure release of adequate Spectrum needed for the growth of the telecom sector. While discussing this aspect on 30 October, 2003 the GoM decided 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'. While the GoM of 2006 was constituted, the Planning Commission had suggested on six ToRs which *inter-alia* included suggestion for a Spectrum Pricing Policy and related matters. But the original ToRs were revised and Spectrum Pricing Policy did not find a place in the revised ToRs. In this context, the Committee find that the then Telecom Minister wrote to the Prime Minister requesting him to delete the Spectrum pricing issue from the ToRs of the GoM. The Committee are startled to observe the manner in which the then Minister of Communication & Information Technology succeeded in getting revised the terms of reference of the GoM issued by the Cabinet Secretariat under the orders of PMO on 27th November, 2006 excluding the matter of spectrum pricing from the purview of Ministry of Finance and leaving it solely to the Deptt. of Telecommunications to decide. In the considered view of the Committee such a decision overriding the Cabinet decision of October 2003 ultimately facilitated the successor MoC&IT's dubious decision leading to the 2G Scam. The Committee are shocked that, as required under the transaction of Business Rules, modification in the Cabinet decision of Oct. 2003 was never brought before the Cabinet even for ex-post-facto approval. The DoT owes explanation for such a gross dereliction of duty. The Cabinet Secretary and the PMO knew about these developments but did not take corrective action.

Shri D.S. Mathur, the former Secretary, DoT while deposing before the Committee, gave an impression that he was dead against the arbitrary way the Communication Minister was functioning. But his correspondences with the

Finance Secretary substantiates that he was defending the Minister throughout. The explanation that so long he was in the Ministry he had to defend the policies of the Ministry until he could get the policies changed which he could not and his finally recusing himself from the scene is example where an officer at the verge of retirement does not stand up to protect about what he considers wrong. His claims that he verbally took up the matter with the Cabinet Secretary and the Principal Secretary does not make any sense. Shri Siddharth Behura, another former Secretary, DoT although submitted before the Committee that there was no established procedure in the DoT for process of applications, grant of UAS licence/2G Spectrum etc. and he opposed the method adopted by the Minister, yet he himself became a party to the dirty game. Ms. Manju Madhavan, former Member (Finance), Telecom Commission did not bring to the notice of the Finance Minister/Secretary the disparaging remarks got from the Minister on the file for her rational stance and reasonable and apt suggestions. This is another case where Member (F) also proceeded for retirement. The Committee strongly feel that this situation if allowed to go unchecked, honest and upright officers will ultimately became mute and ineffective and the Government therefore should seriously ponder to remedy the situation.

Thus, it becomes apparent that the senior bureaucrats of the DoT were not allowed to discharge their duties properly and effectively, as required for transparent governance. Obviously, the role of Cabinet Secretariat and the PMO remains far from edifying in that they too overlooked the need for compliance with the decision of the Cabinet. What is intriguing is that when the Cabinet Secretary wrote to the Finance Secretary in May, 2007 and Secretary DoT for inclusion of spectrum pricing within the ToR of the GoM consistent with the decision of the Union Cabinet of October 31, 2003, there was no correspondence thereafter from the Ministry of Finance with the Cabinet Secretariat. A close examination of the documents made available to the Committee shows that ToRs of the GoM were revised on the request of the then MoC & IT and the PMO had considered all relevant aspects of the matter including the Cabinet decision of 2003, and the term of reference for the GoM as suggested by the Planning Commission. Strangely, as against the first note initiated in the PMO, the Joint Secretary recorded a prescient note that the terms of reference as suggested in

the office note may not be "acceptable" to the MoC & IT and it would lead to delay in the commencement of work by the GoM and thus the ToRs were revised as acceptable to MoC & IT with the specific approval of the Prime Minister. To a query of the Committee, PMO clarified that not giving effect to Cabinet decision tantamounts to varying or reversing the Cabinet decision but strangely, they claimed that they had no record to indicate that the Cabinet decision of 2003 was not being followed and clarified that a duty was cast on the Department concerned to give effect to the Cabinet decision. The Cabinet Secretariat has washed off hands by stating that the responsibility of ensuring compliance with the directions of the Cabinet or its Committees rests with the Ministry/Department concerned. What further irks the Committee is the reply of the PMO that there is no specific requirement for the PMO to enforce Cabinet decisions and nor is this the general practice. The Committee wonder if it is not the duty of the PMO or the Cabinet Secretariat to enforce the Cabinet decisions in letter and spirit who else is entrusted with this responsibility? The Committee are of the firm opinion that if it was not a requirement earlier on the part of the Cabinet Secretariat and the PMO to ensure the enforcement of the Cabinet decision, the 2G Spectrum scam should be an eye opener for them to at least now start the practice and vigorously monitor the effective compliance to every Cabinet decision.

Further, in the context of the role of the Ministry of Finance when the former Secretary DEA was asked as to what transpired after the letter of 29 Nov. 2007 written by Secretary DoT to him, he admitted that there was no exchange of correspondence thereafter but certainly discussions went on. Asked to furnish documentary evidence, he said that everything was not reduced in writing in the Govt, though it was professionally inappropriate, but due to pressure of work it so happened. He further submitted that though things did appear in the papers about the happenings in the DoT but the DEA was not sure that the licences would be issued on a particular date. He failed to recall any reference made by him to the Cabinet Secretariat but admitted he should have briefed the FM. He also admitted lack of due diligence by the Ministry of Finance in the matter.

The examination of the files of DEA by the Committee disclosed that on receipt of the last letter dated 29 Nov. 2007 sent by Secretary, DoT to the Finance

Secretary, a self-contained note was put up by Director (Infrastructure) DEA marked to JS(OT)/AS(EA). The file was returned without any marking or signatures as if the whole matter was to be kept at arms length by superior authorities in the Ministry of Finance though gravity of the occasion warranted swift and drastic action on their part but instead chose to be a mute spectator. Another example of callous and irresponsible bureaucratic practice followed by the DoT and the Ministry of Finance can be well gauged from the fact that the DoT in its letter dated 15th June, 2007 informed the Ministry of Finance that Spectrum pricing and charges being dynamic issues, are to be considered from time to time in consultation with TRAI, but the Ministry of Finance apprised the Committee that they never received this letter. So, it is apparent that some foul game was being played in the corridors of these Ministries. The Committee demand an investigation of this mysterious episode and desire an explanation thereafter to ascertain which Ministry was at fault.

Thus, taking note of the above sequence of events that preceded the distortion of the ToRs of the GoM-2006 to remove the Spectrum pricing issue, the Committee cannot but conclude that this decision was taken with the knowledge of the DoT, the Ministry of Finance, the Cabinet Secretariat and the PMO. It is true that not only serious systemic flaws have crept in the governance of these Ministries/Departments but also the malady is deep rooted.

The Committee are shocked and dismayed to note that the Finance Minister, in his note dated 15th January, 2008 acknowledged that Spectrum is a scarce resource and the price of Spectrum should be based on its scarcity value and efficiency of usage but made a unique and condescending suggestion that the matter be treated as closed. The Committee believe that ends of accountability demand that any wrongful loss caused to the Government is made good and the guilty brought to justice. The Committee view it most unfortunate that the Finance Minister, the guardian of the public exchequer – and entrusted with the principal task of mobilization of resources for public welfare, instead of initiating stringent and swift action against all those responsible for the whopping loss to the exchequer pleaded with the Prime Minister to treat the matter closed.

FIRST-COME-FIRST-SERVED(FCFS) CRITERION

The Committee note that the First-Come-First-Served (FCFS) basis for the issue of Licences and Allocation of Spectrum has been followed by the Department on the argument that the announced UASL guidelines have made it open for new licences to be issued on continuous basis. The Committee's scrutiny of the records reveal that in the Basic Service Licences guidelines, there is a reference to FCFS but nowhere in the UASL guidelines, the term FCFS has found a mention implying thereby it has no sanctity. In fact, on 24th November, 2003, the then Minister of Communications and IT had approved the Department's proposal to give licence Spectrum on FCFS basis, but it was not codified in the UASL guidelines. Thus, there has been no such legally established principle as 'FCFS', at best it can be termed as a prescription to be followed for grant of licence/Spectrum. This prescription was adopted and applied inconsistently and in deviation of the avowed objective of the NTP-99 for providing a level playing field to the prospective applicants/players. The greatest demerit of the FCFS criterion is that there is every possibility of exclusion the best applicant's offer. And that was what exactly happened in the grant of UAS licences in 2007-08. It was used as a tool to favour certain non-serious applicants ignoring the request of the serious and established players. The CVC observations and the One Man Committee (OMC) findings have substantiated this fact and the CBI investigation is reinforcing it. The Committee, therefore, urge upon

the DoT to revisit the FCFS criterion, adopted by them in the grant of licence/Spectrum and take effective measures to ensure that the FCFS basis is not misused and abused, should they still prefer to continue with that basis after a comprehensive relook at it.

Much to the consternation of the Committee, the FCFS basis as adopted by the DoT, notwithstanding its merits and demerits was not followed in letter and spirit as is evident from the fact that applications submitted between March, 2006 and 25th September, 2007 were issued LOIs simultaneously on 10th January, 2008. In this context, the Committee find that the procedure followed prior to 7.1.2008 was that the date of receipt of application in DoT was reckoned for the purpose of FCFS which was changed to the date of issue of LOI w.e.f. 7.1.2008 in an abrupt and arbitrary departure from the extant practice. Shri D.S. Mathur, former Secretary, DoT submitted before the Committee that the extant policy in the allocation of UAS licences/2G Spectrum was not permitted to be used properly by the Department. Shri Siddhartha Behura, former Secretary, DoT (since charge sheeted) testified that inter-se seniority should be determined by the date of application, a condition which he had inserted in the draft Press Note of 10.1.2008 which was deleted by the Minister and thus overruling the Department's views. Shri Nripendra Misra, the former Chairman, TRAI categorically emphasized that all those who complete the formality of the LOIs within 15 days, should remain in the same order as on in the application date. But, the Committee are shocked how by devising a capricious and opaque procedure, the applications submitted between March 2006 and 25.9.2007 were issued the LOIs simultaneously on a single day on 10 January, 2008

and asked to fulfil the conditions and to collect the same within less than an hour under the order of MOC & IT as against the prescribed period of 15 days under the procedure followed hitherto. Evidently, the chosen companies had foreknowledge of such novel method with the result they were able to fulfil the conditions of PBG, FBG and Demand Drafts drawn on dates prior to the cut off date by the DoT. The Committee deplore the brazen manner in which the LOIs were issued despite assurance to the Prime Minister that the processing of applications would be done in consonance with the extant practice and full transparency maintained in the DoT.

ROLE OF MEDIA AND WHISTLEBLOWERS

The Committee note that the brazen irregularities in the allotment of 2G spectrum and UAS licences were unravelled by some investigative journalists much before the Radia tapes came into the public domain. A journalist who played a stellar role in exposing the irregularities, on being asked about the sources of his information, replied that the information was collected through the RTIs and from some public-spirited insiders. The publishers of the news magazines who first published the tapes, testified that they were actuated by their journalistic duty to reveal the truth and the irrepressible urge of public interest. The Committee appreciate the exemplary professional job done by these journalists who despite the imminent possibility of the serious hazards both physical and financial undertook the venture they embarked upon. When the Committee sought the response of a senior journalist about these taped conversations he candidly deposed that what they did was utterly unprofessional. He conceded that the journalists do speak to various sources as it is their job to fathom out and reveal the truth but they ought not get involved in lobbying for any one and certainly the taped conversations show that they transgressed the line of propriety - the 'lakshman rekha'. More so, senior journalists as they were, they knew when they made such a transgression. The Committee value immensely the freedom of the Press and, therefore, do not wish to suggest any model code of conduct for the media. The Committee believe that no journalist who values self-reputation, credibility and treasures the freedom of the media will ever indulge in an act incompatible with the professional norms of journalistic conduct. The Committee have unflinching belief and faith in a free, fearless, bold and credible press and the electronic media as such journalists are the *sine-qua-non* of a vibrant democracy of the people, for the people and by the people.

The Committee's oral examination of various witnesses and the material evidence on record revealed the singular role played by the whistleblowers in exposing the irregularities. Undoubtedly, the whistle- blowers, driven by the sense of probity in public affairs, took a calculated risk in help exposing the

grave irregularities regardless of the perils of the venture they embarked upon. The witnesses sought the indulgence of the Committee to protect the source of their information apprehending grave threats to their lives. Mindful of the apprehension of grave threats to the life and limb of those invisible and self-effacing but gallant sentinels on the qui vive, the Committee recommend that, being the willing and self-less benefactors of the nation, the whistleblowers be extended appropriate and effective statutory protection from harassment, intimidation, demotion, physical or financial harm etc., as an integral part of the multi-pronged strategy to bring greater transparency and probity in the conduct of public affairs.

Presumptive Loss

The Committee note with profound concern the nation-wide public shock and indignation over the gross irregularities in the allotment of 2G spectrum and the colossal fiduciary loss caused to the public exchequer. Well before the C&AG report was tabled in Parliament, in his petition to the Supreme Court, Shri S. Swamy calculated a net loss of Rs.97,410.74 crore and Shri B.K. Syngal, a well known telecom expert and former CMD BSNL quantified the possible loss between Rs.70,000 to Rs.80000 crore based on a multiple of indicators. Shri Sitaram Yechury MP, taking the 3G spectrum price' dual technology licences and allotment of excess spectrum as benchmark, calculated the loss to the whopping order of Rs.1,90,000 crore. The C&AG based on a set of parameters pegged the presumptive loss at Rs.1,76,645. The CBI calculated the loss roughly between Rs.40,000 crore to Rs.50,000 crore based on the premise of the profits made by Swan and Unitech by sale of equity. The CBI however clarified that they were concentrating the investigation on criminal conspiracy and the money trail. The Committee are, however, shocked to note that pending their examination of the C&AG Report, the Minister of Communications and Information Technology addressing a press conference on 17.1.2011 described the presumptive loss calculated by the C&AG as 'utterly erroneous and embarrassing to the Govt'. He described the calculation methodology adopted by the C&AG 'without basis and a

serious error on the part of the constitutional authority' and charged that the sensation thus caused 'allowed the Opposition to spread utter falsehood'. The Committee disapproves the public criticism of the institution of the C&AG and Parliament itself. More so, the frontal attack was made by the Minister whose Ministry and his predecessor were under scanner and at a time when the matter was under examination in the PAC, obviously with an intent to confuse and create fissures. It is surprising that the Ministry of Finance responsible for macro management of the economy and mobilization of resources for development, has made no assessment of the loss on the ostensible ground that it is difficult to work it out except conceding that spectrum is a scarce resource and that the spectrum commands premium as the market expands. Intriguingly, neither the DoT nor the TRAI has quantified the precise loss. Unfortunately, the DoT instead of admitting an unconscionable act, advanced the plea that theoretical exercises based on economic modeling are fraught with simplistic assumptions and that no methodology can be suggested by them to calculate the loss. The Committee deplore such an intransigent attitude of DoT attempting to defend the indefensible even on hindsight given the findings of the experts engaged by the TRAI, who found that the value of 2G spectrum is higher than 3G in rural segments, the unexpectedly high earnings from 3G revenue and the written advice of the PM for auction of 2G spectrum in a fair and transparent manner. On the presumptive loss of Rs.1.76 crore, the C&AG has himself explained to the Committee that the calculation was based on certain econometric or mathematical methods after trying different econometric models and consultation with CAs and

thus the loss of revenue to the Government calculated on real market situations cannot be faulted but may be debated. The C&AG has further explained that accountability is fixed in the Government after the events are investigated and drew the attention of the Committee to the C&AG report which says the entire process of allocation of 2G spectrum raises serious concern about the system of governance in the DoT which need to be thoroughly renewed and revamped.

The Committee feel that giving dual technology licence to the CDMA operators and new UAS licences in 2007-08 at a price determined in 2001 was not only imprudent but also smacks of a design. Ignoring the voluntary offer of a Company to pay much more than the 2001 price even without auction did not persuade the Government to realize the true market price of spectrum. Similarly, allotment of additional Spectrum, beyond the contractual amount, to the GSM operators was at a cost to the exchequer which the Department themselves have realized and are reportedly taking measures to recover it. Revenue generation from the auction of 3G & BWA Spectrum in 2009 unquestionably established the true value of Spectrum. Arguments in some quarters that the 3G price cannot be compared with the 2G price are untenable simply because two different means were adopted for the allocation of 2G & 3G Spectrum. In one case, there was no transparency and violation of established norms, rules, procedures, cabinet decisions *et al* was writ large there, whereas in the other cases it was quite transparent and in accordance with the decisions taken at various levels. In other words, had the allocation of 2G Spectrum made through a fair and transparent method like auction as recommended by the TRAI and also advised by the

Prime Minister, no accusation would been raised against a fair and transparent procedure regardless of the revenue realized. Since that was not done and 2G Spectrum was arbitrarily given at a throwaway price and 3G auction gave revenue five times more than the base price, the two are certainly comparable and according to the Committee, maximum loss to the exchequer was on this count. Therefore, it is imperative and incumbent upon the Government to get calculated the exact loss caused to the exchequer instead of washing off their hands on the simplistic plea that it is difficult to estimate the loss. The Committee further recommend that the Government must evolve a standard, fair and transparent procedure to avoid pecuniary loss to the Government and recover the unlawful gains made by all those responsible for the staggering national loss.

CLEANSING THE BUREAUCRACY

The Committee note with profound concern that there is no foolproof system to detect the misdeeds of corrupt elements in the bureaucracy, the permanent standing machinery of the Government intimately associated with the formulation and responsible for execution of the diverse plans and programmes of the State. The Committee are anguished that the accountability procedures in the Government continue to be defused and weak and it becomes almost difficult to fix individual responsibility. They consider the very concept of accountability null and void if nobody knows who is responsible for the acts of omission and commission in the bureaucratic labyrinths. Another area of serious worry is, as shown by recent happenings in the DoT, the administrative powers of postings and transfers which is used as a powerful leverage to reward pliant officers and to punish or marginalize officers of unimpeccable integrity who refuse to be privy to wrongdoing or decline to render palatable advice. It is all the more unfortunate that India, the largest democracy of the world, is viewed so poorly in terms of global corruption perception index. The Committee recall approvingly the words of Kautilya who wrote in the 3rd century BC that it is possible to mark the movement of birds flying high up in the sky but it is not possible to ascertain the movement of Government servants with a hidden purpose or like the quantification of water drunk by swimming fish. The Committee, therefore, recommend that the system of concurrent internal audit needs to be strengthened and accorded full autonomy with a duty cast on each Financial Advisor to report all financial irregularities to the Finance Ministry as well as to the statutory audit. Further, each Department/Ministry must have CVOs with well defined mandate to maintain unremitting vigil on the internal functioning of the Department. It also needs to be ensured that the CVOs are selected in consultation with the CVC after following fair and transparent procedure to avoid any bias or allegation of favouritism. The Committee hardly need to reiterate that the anti-corruption laws must be stringent enough to create the trepidation of law and deter the public servants from wrongdoing, provide for speedy trial and guarantee that justice is not denied or delayed. The

Committee also recommend that the entire data regarding cases of corruption showing the complaints received, cases under enquiry, referred for police investigation, officers charge sheeted, convicted and not found guilty must be placed in public domain and also reflected in the consolidated report of the CVC to be presented to Parliament annually. Recognizing the functions of constitutional institutions like the C&AG, and premier agencies like the CVC and the CBI and their vital role and the need for safeguarding their independence and credibility, a transparent system needs to be evolved for their appointment. The Committee, therefore, recommend that a panel under the Chairmanship of the Prime Minister comprising of a judge of the Supreme Court, Home Minister and Leader of Opposition be formed for appointment of the C&AG, CVC and the Director CBI. The Committee are saddened to find a discernable but disturbing pattern in some top civil servants joining private sector including public relation firms soon after their retirement. The names of some recently retired civil servants, who held significant positions in the Government and tribunals and joined certain private public relations firms or business houses, are under public scanner for their allegedly questionable role in the 2G Spectrum allocation. In order to break such an unholy nexus and the prospect of any quid-pro quo, it is essential that all officers of the rank of Secretaries to the Government of India are debarred from joining any tribunal and non-governmental company or firm by providing a cooling-disconnect of three years after retirement. The Committee are of the considered view that such a resolution of the Government would eliminate the apprehensions expressed in many quarters about the Government or private sector dangling a lucrative assignment to a civil servant on the verge of retirement, allegedly for extraneous reason.

Shortcomings in the Implementation aspect

The Committee's scrutiny reveals the flip-flop in the implementation of the UASL regime which was approved by the Cabinet in 2003 based on the recommendation of the TRAI. The Committee note that the UASL regime was to be implemented in two phases, viz, (a) migration of existing Basic Service Operators (BSOs) and Cellular Mobile Service Operators (CMSO) to the new regime on payment of migration fee equal to the fee paid by the 4th Cellular Operator introduced through multi stage bidding process in 2001, and (b) starting of the second phase with a notional entry fee for licence and a separate charge for the spectrum. While the first phase was implemented, the second phase was conveniently and intentionally, as subsequent events substantiate, overlooked. In the process, devising an efficient allocation formula for Spectrum alongwith an appropriate price remained unachieved as delinking the price of Spectrum from the issue of licences was given a go bye, disregarding the Cabinet decision. The Committee are deeply distressed that due to violation of the Cabinet decision and as a consequence of such deliberate omission, the issue of UAS license and allocation of Spectrum in 2007-08 at the price discovered in 2001 caused a staggering, but wholly avoidable, revenue loss. Moreover, considering the nascent tele market in 2001 and the geometric increase in the tele density post 2001, it is quite intriguing that the non-implementation of the second phase of the UASL regime was not placed before the Cabinet for a

review. Worse, despite the recommendation of the TRAI in May 2010 and February 2011, delinking of the price of Spectrum from the issuance of licence is yet to take place. The DOT's reasoning of not implementing the second phase of the UASL regime on the plea of waiting for TRAI recommendations has miserably failed to impress the Committee. Similarly, the Department's audacious reply of not putting the matter before the Cabinet, without assigning any valid reasons for that, is highly deplorable. The Committee, therefore, recommend that henceforth non-compliance to non-achievement and modification/variation of any decision of the Cabinet should invariably be put before the Cabinet for their consideration, failing which the Cabinet Secretariat should take a serious note of it to fix responsibility on the delinquent Ministries/Departments. The Committee also desire that the price of Spectrum be delinked from the issue of licences without further delay and seek explanations as to why this important decision has not been implemented as yet. Further, a strong system of monitoring and compliance of Cabinet decisions must be evolved and firmly put in place by revisiting the transaction of Business Rules in order to ensure that the Cabinet decisions are implemented in letter and spirit and no undue advantage is taken of the systemic loopholes by the ravenous fly by night operators created as front companies by unscrupulous elements.

Cooling disconnect after retirement

The Committee are saddened to find a discernable but disturbing pattern in some top civil servants joining private sector including public relation firms soon after their retirement. The names of some recently retired civil servants, who held significant positions in the Government and tribunals and joined certain private public relations firms or business houses, are under public scanner for their allegedly questionable role in the 2G Spectrum allocation. In order to break such an unholy nexus and the prospect of any quid-pro quo, it is essential that all officers of the rank of Secretaries to the Government of India are debarred from joining any tribunal and non-governmental company or firm by providing a cooling-disconnect of three years after retirement. The Committee are of the considered view that such a resolution of the Government would eliminate the apprehensions expressed in many quarters about the Government or private sector dangling a lucrative assignment to a civil servant on the verge of retirement, allegedly for extraneous reason.

Combating the malaise of corruption

The Committee note that the grave irregularities in the allotment of 2G spectrum and the colossal fiduciary loss triggered deep and spontaneous outrage both in and outside the Parliament. The spate of popular anguish and anger against the scourge of corruption and the inordinate delay in prosecuting the wrongdoers, impelled the Supreme Court to intervene in the matter. The Committee are pleased that the CBI has since filed the first charge sheet against the accused for forgery, criminal conspiracy, cheating and on other counts before the Court of Special Judge, New Delhi. The Committee, however, strongly believe that the cancer of corruption which is eating into the vitals of our polity and economy calls for a frontal attack since corruption subverts the rule of law, erodes institutions, creates feelings of hostile discrimination aggravates disparities, erodes the moral and ethical values of the society, tarnishes the image of the nations and worst, undermines the legitimacy of the Government and the faith of the people in the democratic set up. The Committee, therefore, are of the considered view that all laws dealing with different aspects of corruption need a comprehensive relook and a drastic overhaul, with far greater focus on tackling upstream corruption as it breeds and promotes down stream corruption. They believe that not only caesar's wife but even the caesar's men ought to be above board. The Committee note with profound dismay the general feeling amongst the corrupt public servants who consider corruption as low risk and high profit business. Considering the urgent need for zero tolerance for corruption, the Committee recommend enactment of a stringent preventive and punitive legislation to (a) provide for calibrated scale of punishment based on the premise that higher the post, higher the degree of responsibility and share of punishment. (b) Stop undue interference in the working of the bureaucracy so that it works without fear or favour and in accordance with law (c) make provision for fast track adjudication of cases

against persons occupying high positions and charge sheeted for corruption so that the guilty are punished without delay and the punishment so inflicted acts as an effective deterrent and (d) disqualify or render ineligible a person for public office or high position once convicted for corruption. The Committee hope that the country-wide deep disgust against corruption would fructify into creating a strong awareness to create a political and economic system with zero tolerance for corruption. The Committee also recommend that India, being a signatory to the UN Convention on Corruption, also ratify the UN convention against corruption expeditiously and demonstrate to the world community India's unequivocal and unwavering commitment to the crusade against corruption.

INVESTIGATION OF THE 2G SPECTRUM CASE BY THE CBI

The Committee's examination of the subject reveals that a source information about allegations of irregularities in the allocation of 2G spectrum under the UAS licencing was being processed in the CBI w.e.f. 12.1.2009. On learning that the CVC was also looking into the matter since January-February, 2008, the CBI decided to await the CVC enquiry report. The CVC on receipt of specific complaints, started a direct enquiry on 17.6.2009 U/S 8(1) (d) of the CVC Act 2003 and after completing the inquiry, it sent the inquiry report to the CBI vide their letter dated 12.10.2009 for further investigation. The CBI accordingly registered an FIR U/S 120B of the IPC for criminal conspiracy read with section 132 r/w 12(1) (d) of the PC Act for criminal conduct. The FIR was registered against unknown persons though the CBI normally registers a preliminary enquiry in which they establish who are the persons responsible and then they lodge an FIR, as admitted by the Director CBI, in evidence. But in the instant case, as the CVC in their Direct Inquiry Report did not name anyone, the CBI lodged the FIR against unknown persons expecting them to be in the DoT, private persons and companies. However, after the investigation took momentum, the unknown persons have been identified, chargesheeted and some arrested. In this context, the Committee disapprove of the practice of lodging FIR against unknown persons in deviation of the normal practice followed by the investigating agency and suggest that, as far as practicable, the CBI should identify and name the persons while lodging FIR in order to foster transparency and inspire public confidence.

The Committee note that the CBI started its raids in October, 2010 after a year of lodging the FIR i.e. in October, 2009 and arrests were made thereafter. Clarifying the reasons for delay in investigating the case, the Director CBI submitted that examination of a lot of records, interrogation of many witnesses collation of information gleaned, its analysis etc. caused the delay. In a post evidence information the CBI apprised the Committee that 1,626 documents running into 1,38,765 pages had already been seized and 115 relied upon witnesses, as mentioned in the chargesheet filed by the CBI on 2nd April, 2011, had been interrogated. The Committee appreciate the volume of work the CBI

has to attend to in the process of its investigation but such a plea cannot be taken as a valid reason for the inordinate delay on the part of the CBI in investigating the 2G Spectrum scam. The public perception remains, and quite justifiably, that the CBI's investigation gained momentum only after the Supreme Court started directly monitoring the case thereby fueling the apprehension that the CBI was initially tardy in investigation under undue external pressure. Either does not augur well for the nation or the credibility of the CBI.

The Committee note that the CBI, the premier investigative agency of the Union, has been set up under the Delhi Special Police Establishment Act 1946. Surprisingly, the expression CBI does not occur in the said Act but derives its nomenclature from a resolution of the M/o Home Affairs dated 1 April, 1963. The Committee further note that as on 1st March , 2001, as against the sanctioned strength of officers and staff of 6538, there were 1368 vacancies with the largest shortage of officers in the executive rank. Apparently, being an organization which has built a reputation for its professional competence efficiency and acquired a definite credibility and respect, there is far greater and growing demand for entrusting complex cases to the CBI for investigation. The proliferation in the responsibilities of the CBI to continues to place enormous burden on the badly strained organization. Apart from the shortage of manpower and resources, there is a strongly felt need for insulating the CBI from any adverse external influence or pressure. The Committee, therefore, recommend a comprehensive cadre review of the CBI, preferably an IIM study, so that agency is fully and well-equipped with necessary material and manpower. The Committee also recommend that the Delhi Special Police Powers Act may be replaced by a new and comprehensive legislation namely, the Central Bureau of Investigation Act with a mandatory provision for appointment of the Director CBI akin to a modified procedure for appointment of the CVC in order to safeguard the integrity, autonomy and independence of the CBI. Further, suitable rules may made under the law so contemplated to provide for broad time schedule for investigations, filing of charge sheets and follow up of cases with utmost dispatch and diligence. The Committee would also like the Government to make six monthly statements in Parliament with regard to the stages of various cases undertaken by the CBI for investigation charge sheets filed the final outcome

thereof including the judgments delivered, convictions held and the number of accused held not guilty.

GRANT OF LICENCES TO INELIGIBLE COMPANIES

The Committee during its scrutiny of issue of Licenses to ineligible Companies found that certain Companies which had declared real estate as their business activity in their main object clause of MoA had been awarded licences; certain Companies which did not have authorized share capital/paid up capital on the date of applying for UAS Licenses were given the same; the Department of Telecommunications (DoT) failed in cross verifying the status of Companies with the Ministry of Corporate Affairs; there was gross violation of rules & regulations to favour M/s Swan & Unitech; S-Tel having won cases on the issue of arbitrariness in cut-off date was forced to withdraw its case in the Supreme Court owing to DoT raising false Security concerns; and apart from subverting rules & regulations, in case of M/s Swan, BSNL was made to sign an MoU for providing intra-circle Roaming Arrangement. An independent expert with vast experience of Telecom Sector testified before the Committee that 'all pseudo methods' and 'dirty tricks' were used by these companies to get into the telecom market at the cost of tax payers' money.

2. The Committee 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. The Committee found that in order to increase the authorized share capital Extraordinary General Meetings were held and resolutions passed to the said effect. The enabling provisions of the Companies Act, 1956 allows Companies to increase their authorized share capital by way of passing resolutions through General Body Meetings and also by way of application to the said effect to the ROC within 30 days or beyond that with a payment of fine. The Committee disapprove the manner in which these applications were processed by the DoT though they did not meet the eligibility criteria. The Committee would like to know the outcome of the showcause notices issued to these ineligible

companies the responsibility fixed on the officers responsible for the serious lapses and the steps taken to cancel the licences of all those companies which were ineligible or furnished fictious information and suppressed material facts.

3. The Committee note that, these Companies had declared real estate as the business activity in the main object clause of MOA instead of telecom sector as on the date of application. However, the subsequent resolutions altering the main object clause of MOA had not been registered as on the date of application. The Committee found that the UAS guidelines of 14th December, 2005 did not stipulate that the telecom sector be the declared activity of the Companies applying for grant of licences. The Committee are of the considered opinion that this major lacuna in the guidelines helped all and sundry to apply for licences, thus frustrating the desired intention of the Government of bringing in greater competition in the telecom sector. Further, the Companies which were granted licences in turn sold them making huge wind fall gains, what experts described as the true value of the Spectrum, which were actually to go to the Government coffers. The Committee, therefore, recommend that the Government make an assessment of the loss to the public exchequer.

4. When the Committee asked about the measures that were taken by DoT to make the verification process fair and transparent, the Department submitted that as a matter of abundant precaution, the DoT had taken an undertaking from the applicant Company to the effect that licences granted on the basis of incorrect undertaking given to the DoT, their applications would be cancelled and necessary action taken under the provisions of the UAS Licence Guidelines/agreement. When the Committee specifically wanted to know about the action that was taken/proposed to be taken against the Companies who had suppressed facts, disclosed incomplete information and submitted fictitious documents for getting UAS Licences/Spectrum, they were apprised that certain Companies who had not met eligibility criteria, as pointed out in CAG Reports, had been issued Show Cause Notices. Further it was stated that the Companies had submitted their replies and the same were under the examination of the Department. The Committee would like to know the present status of those cases and the action taken against such Companies after consulting the Ministry of

Company Affairs and the Ministry of Law and Justice as also the explanation of guilty officials and the steps taken to fix responsibility.

5. The Committee in the course of examination of issuance of Licences to ineligible operators found that 'The Economic Times' dated 9th January, 2008 had published an article titled '6 fail to cross DoTted line' in which the Companies that were to be awarded Licences had been named. The article had clearly stated that 'DoT to Issue LOIs to 10 Companies' and naming them as 'Lucky 10', it stated that Unitech, Datacom, Stel, HFCL Infotel, BPL, Shyam Tele, Swan Communications, Idea, Tata Tele and Reliance Communications were those Companies. The article further stated that DoT would begin issuing the LOIs from Wednesday and try to complete the process by that weekend. In order to have clarity on the issue that certain Companies were privy to the information about the time when the LOIs were to be issued, the Committee cross examined the representatives of M/s Etisalat DB Telecom Pvt. Ltd. (formerly known as M/s Swan Telecom Pvt. Ltd.) The Committee asked the representatives as to how on 10th January, 2008, when LOIs were issued and 45 minutes time between 2.45 pm and 3.30 pm was given to fulfil the requirement of submitting the drafts, a Demand Draft for ` 50 crore drawn on Punjab National Bank of Mumbai could reach Delhi from Mumbai on the same day. The witness in their written submission have stated that most of the applicants had deposited the same on 10th January 2008. Further, regarding the clarification of the DD, it was stated that the DD was drawn on Punjab National Bank in New Delhi and a photocopy of the same was annexed. But to the dismay of the Committee they found that instead of ` 50 crore DD drawn on PNB they were furnished with a copy of Banker's Cheque dated 9.1.2008 drawn on SBI, New Delhi for ` 203.60 lakhs. The Committee view this very seriously as the concerned Company failed to clarify the correct position with regard to the financial instruments deposited by the Company with DoT and recommend that the matter be enquired into and correct and complete information be furnished to the Committee alongwith the action taken against defaulter companies.

6. The Committee found that rules were violated in order to accommodate and favour a few Companies. The licences had been issued to Companies which had suppressed facts, disclosed incomplete information and submitted fictitious documents to the DoT and thus used fraudulent means for getting UAS licenses and spectrum. Owners of these licenses had obtained them at unbelievably low prices and had in turn sold significant stakes in their companies to the Indian/foreign companies at high premium within a short period of time. The premium earned by these new entrants to the telecom sector was nothing but the true value of the spectrum, which should have normally accrued to the public exchequer. The Committee, therefore, recommend that all those Companies who suppressed facts and furnished fictitious documents be sternly dealt with in accordance with the undertakings taken from them before signing the Licence agreements and the Committee apprised.

7. The scrutinisation of the Subject further revealed that different decisions were taken in respect of M/s Loop Telecom Pvt. Ltd. and M/s Swan Telecom Pvt. Ltd. with regard to alleged violation of the substantial equity clause 8 of UAS Guidelines. In the case of M/s Loop Telecom Pvt. Ltd. a reference was sent to Ministry of Corporate Affairs for examination but in case of M/s Swan Telecom Pvt. Ltd. the Minister had decided that SG's opinion may be sought as he was representing the DoT in TDSAT and at other Judicial Forums including in the High Court, Delhi. The SG in his opinion had held that the applicants fulfiled all the necessary conditions cannot really be faulted". However, when DoT officials again sought permission to refer the matter to the Ministry of Corporate Affairs for investigation, the Secretary (T) on 17.04.2009 held the view that 'in view of the opinion of SG no such reference is required' and the Minister approved the same on 18.04.2009. The Committee find that the DoT wrongly referred the case to SG directly without routing the case through Ministry of Law and Justice as required. The Committee, therefore, come to inescapable but firm conclusion that both the Ministry of Communications and Information Technology and the SG were equally responsible for favouring M/s Swan by circumventing the due procedure. Since the then Secretary, DoT stands chargesheeted, the Committee demand explanation of the then 'SG' the Law Officer, as to why he prevented the DoT from referring the matter to Ministry of Corporate Affairs. The Committee also deplore

the role of the Minister who went out of the way to ensure that certain Companies which were granted UAS Licences were disqualified or rendered ineligible had the matter been referred for the opinion of Ministry of Corporate Affairs.

8. Examining the role of DoT in issuing the Licenses and the follow-up action the Department was taking once Licenses were granted, the Committee found that 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. TRAI, having analysed the reports submitted by the licensees, 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 beyond 52 weeks from the due date of compliance. 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, had requested DoT to take immediate necessary action. When the Committee asked why DoT on its own had not taken any action against the defaulting operators, DoT's reply on the matter was far from convincing. The Committee find that DoT had grossly failed in its duty of having a watch over the compliance aspect once the licenses were issued.

9. The Committee note that M/s S Tel challenged the legal validity of the Press Release dated 10.01.2008 as the Press Release arbitrary advanced the cut-off date as 25.09.2007 and they were deprived from being granted LOIs for UAS Licences for 16 circles for which they had applied after 25.09.2007. A single Judge and later a division bench ruled in S Tel's favour holding the said advancement of the cut of date as arbitrarily and illegal. The Hon'ble Supreme Court on appeal by DoT refused to interfere with the order of the Delhi High Court. The Committee learnt that the M/s S. Tel decided not to pursue with the case as they had received a letter regarding the cancellation of the commercial launch citing security reasons by the DoT. But, on the contrary, the Committee found that the Company was arm-twisted to withdraw the case despite having received favourable verdicts from the High Court and upheld by the Supreme Court. Since the impugned Press Release was quashed by the High Court of

Delhi being arbitrary and unjustified, the Committee recommend that necessary logical action be taken to cure the adverse fall out of the arbitrary action leading to gross discrimination and favouritism.

10. The Committee in the course of examination learnt that BSNL had signed a Memorandum of Understanding with M/s Swan on 13.10.2008 for providing Intra-Circle Roaming Arrangement to Swan's GSM subscribers in the BSNL's GSM network. When the Committee wanted to know the circumstances that led to BSNL permitting a Private Company to share its infrastructure and the amount that BSNL charged for the purpose, the Committee were apprised that the interest of BSNL was fully protected. The arrangement was entered into only with M/s Swan Telecom Ltd., to start with and it was on non-exclusive basis. Further, it was added that 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 accordingly as per the terms of MOU. On being specifically asked to furnish the payment details alongwith relevant Annual Gross Revenue (AGR) Statements filed by M/s Swan/Ms Etisalat, DoT replied that in view of non-implementation, no claims were applicable and no charges were levied and collected. Further, it was added that '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 Organisations'. As former CMD, BSNL and a telecom expert, deposed before the Committee that BSNL did not allow any roaming arrangement to any private operator, why Swan when asked, he said "Swan is special". The Committee would like to be apprised of the rationale, of such an exclusive arrangement of M/s Swan with the BSNL, the impact of the arrangement on the market valuation of M/s Swan, the basis for determining the usage charges @ 52 per minute, the examples of any such parallel agreement between the private players in India and the reasons for transferring the officers of DoT who opposed such an arrangement. The Committee, therefore, strongly feel that the entire issue of licencing and allocation needs to be revisited and a foolproof and transparent procedure devised to avoid recurrence of such shameful incidents entailing loss of revenue. The Committee also recommend that the Government take into consideration the

vital concerns of internal security and defence and evolve sound system and procedure and place the same before the Committee expeditiously.

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

The Committee are highly perturbed to note that the considered and imperative advice given by the Prime Minister and genuine concerns expressed by him on the developments in the Telecom Sector in his letter dated 2nd November, 2007 to the then Minister of Communications and IT, was just disregarded by him. The Prime Minister, was in fact misled when he was informed by the Minister that the issue of auction of Spectrum was considered but not recommended by the Telecom Commission and also not recommended by TRAI. The Minister was saying half truth, concealing the other half concealing his ulterior design. As a matter of fact and as has been reported to the Committee, the TRAI recommendations of August, 2007 was never placed before the Telecom Commission nor discussed by them between the date of submission of the TRAI's recommendation and the date of Minister's letter. The officials of the DoT who are the full time Members of the Commission considered the TRAI recommendations and the Finance Secretary and other part time Members were deprived of the discussion on such an important matter. Secondly, it was not even thought proper to consult TRAI for a second opinion on their 'No Cap' recommendation which led to a spurt in the number of applications for UAS Licence. Not only that, the MoC&IT arrogantly termed the suggestions of the Minister of Law and Justice to refer the Spectrum related matter to on EGOM, as "out of

context". He audaciously informed the Prime Minister that the cut-off date has been fixed as 25th September, 2007 on the plea of shortage of Spectrum whereas on another occasion he apprised the Prime Minister that there was enough scope for allotment of Spectrum to few new operators even after meeting the requirements of the existing operators and licencees. Another glaring instance of his misleading the Prime Minister was his intimation to the Prime Minister about the availability of Spectrum in the 900 MHz band which was not available then and was subject to vacation by the Defence Ministry. His assurance to the Prime Minister that he was not deviating from the established and existing procedures was a blatant lie as he deformed and distorted the FCFS policy. To top it all, his tone and tenor of the 26th December, 2007 letter to the Prime Minister that since the file for issue of the LOI had been approved by him on 2nd November, 2007, he proposed to implement his decision without further delay demonstrated his arrogance and sense of one upmanship bordering on open defiance. All the above mentioned facts reinforce the Committee's unmistakable conclusion that the former Communications Minister deliberately and disminedly mislead the Prime Minister in order to fufil his nefarious design leading to staggering loss of revenue which also tarnished the image of the country.

The Department's reply in the defence of their Minister furnishing comparative figures of increase in tele-density, rural telephony and decrease in Average Revenue per User (ARPU) and tariff is not neither convincing nor tenable. The Committee outrightly reject the contention that since Spectrum was given in 2007-08 at a throwaway

price, it led to increase in tele-density and a fall in tariff. By the end of 2007, there was enough competition in the Telecom Sector, the tele-density was showing encouraging upward trend and the tariff was coming down at a noticeable pace because of the competition, technological advances and the market dynamism and certainly not due to allotting Spectrum at a dirt.

So far as the role of the PMO was concerned, the Committee find that despite noting the Communications Minister's decision not 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", the PMO did not enforce the above Transaction of Business Rules to sort out the difference of opinion between the Minister of Law and Justice and the Minister of Communications and Information Technology.

The Committee's examination reveals a strange sequence of events relating to the processing of the Communication Minister's letter dated 26th December, 2007 in the PMO. The processed commenced from 31st December, 2007 and closed on 31st January, 2008. The Communications Minister's letter and the External Affairs Minister's note with a suggested course of action was submitted to the Prime Minister on 7th January, 2008, after 12 days of the Communications Minister's letter. On 11th January, 2008, the Private Secretary to P.M conveyed the desire of the PM to take into account the developments concerning the issue of licences. It is pertinent to note here that the UAS Licences had already been issued on 10th January, 2008. The file was resubmitted to the PM

on 15th January, 2008 with a clarificatory note. The file was received back with the Private Secretary to the PM's note that the "Prime Minister wants this informally shared with the Department" and does not want a formal communication and wants PMO to be at arm's length". The sequence of events this testifies some unfortunate omissions. On 3rd January, 2008, by just acknowledging the Minister's letter, the PM seemed to have given his an indirect green signal to go ahead with his plan and decisions. What concerns the Committee is the fact that when the Communications Minister was in such a hurry to implement his decisions, there was no plausible reason to submit the file to the PM after 12 days. Secondly, there is no logic in conveying the Prime Minister's desire to take into account the licence issues on 11th January, 2008 when the process had already been over a day before. Thirdly, there is no justification to share such important issues with the DoT in an informal manner. The last but not the least, the Prime Minister's desire to keep the PMO at arm's length indirectly helped the Communications Minister to go ahead and execute his unfair, arbitrary and dubious designs.

The Committee are shocked and dismayed to note that the Finance Minister, in his note dated 15th February, 2008 acknowledged that Spectrum is a scarce resource and the price of Spectrum should be based on its scarcity value and efficiency of usage but made q unique and condescending suggestion that the matter be treated as closed. The Committee believe that ends of accountability demand that any wrongful loss caused to the Government is made good and the guilty brought to justice. The Committee view it most unfortunate since the Finance Minister, the guardian of the public exchequer – and

entrusted with the principal task of mobilization of resources for public welfare, instead of initiating stringent and swift action against all those responsible for the whopping loss to the exchequer, pleaded with the Prime Minister to treat the matter as closed. The Committee cannot rest satisfied unless the matter is probed in its entirety and the reasons for such an unusual act on the part of Finance Minister are explained to the nation. Further, the Committee find the role of the then Secretary, DEA deficient and wanting as he failed to bring the matter to the notice of the Cabinet Secretary or even in writing to the Finance Minister even after irregularities became public and there was public outcry for huge loss to the public exchequer. The Committee seek explanation from the then Secretary, DEA and all those who chose to be silent bystander or rather indulgently condescending and pleaded for forgetting the loss and treating the chapter as closed.

The Committee take note of the assertion of the Prime Minister before the Editors of the Electronic Media on 16.02.2011 and in the Rajya Sabha debate on 24.02.2011 that he did not proceed in the matter or pricing of Spectrum as he was informed on 4.07.2008 that the Ministers for MOC&IT and Minister of Finance had worked on agreed formula on Spectrum charges in line with the TRAI recommendation. The Committee are of the view that the said agreed formula if any, was reached between the two Ministers after six months of the allocation of UAS Licence/2G Spectrum. The point remains to be answered as to what preceded 10th January, 2008 and reasons for everyone remaining mute spectators till the damage was done. In any case, the Committee would like both the Ministries to

furnish them the agreed formula on Spectrum pricing/charges as arrived at by both the Ministers.

The Committee would further like to point out that the Prime Minister's statement that revenue generation has never been a primary consideration is self-contradictory in view of his own statement in India Telecom – 2007 to the effect that the revenue potential to the Government must not be lost sight of as Government across the globe have harnessed substantial revenue while allocating Spectrum. The PMO is required to reconcile the two divergent views of the Prime Minister.

THE RADIA TAPES

The justification for examining and commenting on the 'Radia Tapes' becomes imperative on the part of the Committee in view of some of the conversations between Ms. Nira Radia on the one hand and some politicians/journalists/bureaucrats on the other, centering around allocation of portfolios in the Union Cabinet, payment of bribe in the allotment of 2G Spectrum etc. which has a direct bearing on the subject under examination of the Committee. In this context, the Committee find that the transcripts of the Radia Tapes were first published in the 'Outlook' and the 'Open Magazine'. The Editor of the 'Open Magazine' and the Editor-in-Chief of the 'Outlook' submitted emphatically before the Committee that they published some selected transcripts of the Radia Tapes in the national and larger public interest. They have also categorically declared the authenticity of the published documents and informed the Committee that nobody whose transcripts they have printed has challenged their veracity and none of them has so far taken recourse to any legal action against either of the magazines for publishing the transcripts. The Committee commend the brave initiatives taken by the two magazines in larger public interest indischarge of their journalistic duly to reveal the truth.

Ms. Nira Radia while deposing before the Committee stated that the publication of her conversations with many people in some magazines was a part of corporate conspiracy against her but did not disclose who the conspirators are. Similarly, while responding to various queries of the Committee, she gave an impression that she was predetermined not to come out with the facts. The Committee feel that her reluctance to speak the truth is somehow an indication of her guilty conscience.

A good deal of Radia Tapes contain conversations which center around the anxiety to get the Telecom Ministry portfolio allocated for the second time to Shri A. Raja as the conversations show that Shri Tata has had a bad chemistry with

Shri Dayanidhi Maran, as per his own admission. Shri Ratan Tata's personal hand-written letter to Shri Karunanidhi, the DMK President and the Chief Minister of Tamil Nadu, praising Raja's achievements, is an irrefutable testimony. The Committee are surprised that a person of Tata's stature sent a personal letter to the DMK patriarch when the latter had nothing to do with framing and implementation of policies at the central level. The Committee agree that a personal hand-written letter should not have been commented upon by them but since it was made public and shows keen interest and involvement of big Corporate Houses in the ministerial portfolio allocation, a matter which has a direct bearing on the subject under examination of the Committee. The Committee consider it a sad reflection on the manner and style of governance and electoral politics and the Radia tapes only reveal the proverbial tips of the iceberg and provides glimpses of the often unreported back room deals, shady trade offs, the role of middlemen who have acquired certain hallow of respectability by assuming more fashionable and modern nomenclatures, corporate wars, quid pro quos between lobbyists and certain journalists, unsatiable greed for wealth etc. The Committee, however, feel that the disclosures made by the tapes have given a new fillip and stimulus to the crusade against corruption.

PERFORMANCE OF THE DEPARTMENT IN VARIOUS SCHEMES

(i) Rural Tele-density

The Committee note that as on May, 2010 the overall teledensity has reached 55.38 per cent. In this context, the Committee find that the urban teledensity has gone up from 20.74 per cent in March, 2004 to 110.69 per cent in December, 2009 whereas the rural teledensity has increased from 1.57 per cent in March, 2004 to 21.19 per cent in December, 2009. Although the rural teledensity has reached the Eleventh Plan target of 25 per cent, yet it has not kept pace with the impressive growth in the urban areas reportedly because of lack of backhaul connectivity, access services, availability of power, affordable and easy to charge handsets, 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 and Low Average Revenue per User (ARPU). Although the Department are reportedly taking a number of steps like VPTs under Bharat Nirman Programme, Shared Mobile Infrastructure Scheme and a number of schemes under the USO Fund, the rural teledensity is far behind the stupendous growth in the urban sector. The Committee, therefore, impress upon the DoT to intensify the measures initiated in that direction besides making

efforts towards removing the above-mentioned impediments so that rural teledensity gets a boost. The TRAI's various recommendations in 2005, 2009 and 2010 relating to the growth of telecom services with special attention towards rural telecom penetration also need to be taken into account for the purpose.

(ii) Broadband Connectivity

The Committee note that the Eleventh Plan target for Broadband Connections was 20 million by the end of 2010 whereas the achievement as on 30th November, 2010 has been less than 11 million connections. TRAI has reported that the primary reasons for low broadband penetrations are lack of support infrastructure, non-availability of 3G & BWA Spectrum, difficulty in getting Right of Way, High Customer Premises Equipment (CPE), Low Literacy and Non-availability of relevant content. 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. The Committee also note that the Department are making efforts to increase the broadband connections by launching a number of schemes. In this regard, the Committee would specifically like to point out that in urban areas broadband demand will pick up as and when such services are available on competitive basis. Similarly, in rural areas high speed internet connectivity available at reasonable rates would help increase the broadband connections. The

Committee, therefore, recommend that the DoT should take according measures, besides addressing the bottlenecks as pointed out by TRAI, to give a fillip to the broadband connections in both rural and urban areas. The Committee appreciate the steps being taken by TRAI in order to ensure the quality of broadband service and desire that the Authority should continue its endeavour in that direction.

(iii) Mobile Number Portability (MNP)

The Committee note that 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. Such 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. In this context, the Committee find that TRAI has been recommending since 2006 the implementation of the MNP Scheme in the country. But the DoT has been repeatedly extending the dead line for the introduction of the Scheme on the plea of delay in procuring the gateway equipment on the part of the BSNL and MTNL. In its latest communication dated 19.07.2010 TRAI has requested DoT not to extend the dead line further. The Scheme was finally launched by DoT on 25.11.2010, despite giving assurance to the Committee in evidence that it would be launched by the extended dead line of 31.10.2010 from the original dead line of 31.03.2009 for

Delhi and 31.12.2009 for the rest of the Country. In this context, the Committee would like to point out that a scheme which benefits both subscribers and the service providers should have not been delayed inordinately and that too after repeated recommendations and request from TRAI. However, now that the Scheme has been launched, the Committee desire that serious efforts should be made for its effective implementation throughout the country.

The Committee are pleased that the Prime Minister in his letter dated 2.11.2007 to the former Minister of Communications and IT emphasized the need for an "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". The Committee hope that at least in these areas of concerns of the PM, the DoT would take appropriate and speedy measures to reinstate the confidence of the Prime Minister and the nation in them.

(iv) Mobile Virtual Network Operator (MVNO)

The Committee note that the concept of the Mobile Virtual Network Operator (MVNO) scheme was conceptualize to provide specialized services to the public by the virtual operators as the main operators may not be able to give such services. However, as per the licensing agreement the main operator will remain responsible for every information being given by the virtual operator. The DoT is about to start the scheme. In this context, Shri B.K. Syngal has given some valuably suggestions on licensing and regulatory framework, infrastructure, service obligation, revenue sharing and cross holding

and merger and acquisition which have been brought out in detail in Chapter – XV of this Report. The Committee desire that the DoT should appropriately consider the suggestions given by Shri Syngal while introducing the scheme.

(v) EMF Radiation by Towers

The Committee note that Base Transceiver Stations (BTSs) of Mobile Communication Network produce Electromagnetic Fields (EMF) radiations. Similarly Mobile Handsets also produce such radiations. Thus EMF radiation in commercial land and mobile service in Telecom Sector which may be classified into two categories i.e. radiation from BTSs and radiation from Mobile Handsets. 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. In this context, the Committee find that the International Commission on Non-lonizing Radiation Protection (ICNIRP) has published guidelines which are endorsed by the WHO for limiting radiation exposure and the DoT has been adopting the radiation guidelines of ICNIRP. On 4 November, 2009 the CMTS/UAS licensees have been directed by the DoT to implement the radiation norms as prescribed by the ICNIRP. One peculiar feature that has come to the notice of the Committee is that the Operators in India themselves certify/test the radiation levels as per the DoT directives of 9 November, 2009 and no monitoring mechanism has been developed by DoT to verify the authenticity of the self certification of the Operators. The Committee deprecate such a mindless arrangement made by the DoT to check the radiation level. Notwithstanding the

TRAI's opinion that till some method to regularly collect the EMF radiation signal is devised, self-certification seems to be an option, the Committee reject the methodology adopted by the DoT and impress upon them to examine the feasibility of introducing a more effective and reliable mechanism.

The Committee also recommend that an inter-Ministerial group comprising of the DoT, the Ministry of Health and Family Welfare and the Ministry of Environment and Forests be constituted to make a joint study on the harmful radiation of the EMF on human beings and the flora and fauna and thereafter devise a suitable monitoring mechanism for keeping it within the permissible level as per the international norms.

ROLE AND RESPONSIBILITY OF TRAI

The Committee note that the recommendations of the Telecom Regulatory Authority of India (TRAI) are not binding upon the Central Government. But it is mandatory for the Government to seek recommendation of the TRAI in respect of matters pertaining to the need and timing for introduction of new service providers and terms and conditions of licence to a service provider. But the Committee are surprised to note that while seeking TRAI's recommendation on 13 April, 2007 on various issues, the DoT did not seek recommendations on grant of new licences despite the mandatory requirement. Even though the decisions of the Government is final whether to accept or reject the TRAI's recommendation, not seeking such recommendations at all speaks volumes for the DoTs malafide designs to circumvent the established provisions in the TRAI Act.

Besides, the Committee find TRAI's flip-flop in its recommendations also contributed towards the Department's arbitrary and unilateral decisions. For example, in 2003 TRAI recommended that as the existing players have to improve the efficiency of utilization of Spectrum and if Government ensures availability of additional Spectrum, then within the existing licensing regime, they may introduce additional players through a multistage bidding process as was followed in the case of introduction of the fourth cellular operator. Quite contrary to its recommendations of 2003, TRAI recommended in 2007 that in future all Spectrum excluding Spectrum

in the 800, 900 and 1800 MHz bands(2G Spectrum) should be auctioned on the ostensible logic of maintaining a level playing field. The Authority, however, simultaneously recommended that on the issue of grant of licences, a market mechanism should be devised. This over turn and ambivalence in TRAI's recommendation provided the DoT much needed lee way in cherry-picking the Authority's recommendation. TRAI's clarification before the Committee that it never recommended the grant of UAS licence in 2007-08 at a price determined in 2001 fails to impress the Committee because TRAI also did not say not to give UAS licence/2G Spectrum at 2001 prices. The mere statement that the market dynamics should be taken into consideration does not imply that TRAI has restrained DoT not to give UAS licence in 2007-08 at 2001 price. The Committee, therefore, recommend that TRAI should reflect deeply and dispassionately mindful of the far reaching implications of their recommendation so that there is no scope for second interpretation or the so called cherry-picking.

Shri Nipendra Misra, former Chairman, TRAI, while deposing before the Committee went even to the extent of correcting his earlier recommendations of 2007 for not auctioning 2G Spectrum. He emphasized that Spectrum in all bands should be auctioned and licences should be delinked from Spectrum. The Committee view such a belated realization seriously as he failed to make tangible recommendation in this behalf in 2007 when he was the Chairman TRAI.

The Committee note that TRAI can make *suo-motu* recommendations on any matter as specified in Clause (a) of Sub-section(1) of Section 11 of the TRAI Act. But the Committee are surprised to note that when the so-called FCFS basis was adopted by the DoT in the grant of UAS lices/2G spectrum, TRAI did not exercise its *suo-motu* powers. The Authority's explanation that TRAI never recommended First-Come-First-Served criteria is again an indicator of TRAI's ambiguous stance on important matters which the Committee view worse than dereliction of duty. The Committee are not impressed with the averment of TRAI that they did not recommend FCFS criteria but having taken note of a particular procedure if found defective, nothing presented TRAI to recommend a more appropriate methodology for allocation of Spectrum in consonance with the market dynamics which would have led to the price recovery of the scare resource. The Committee consider it TRAI's moral obligation to take such steps because its advocacy of no auction of 2G Spectrum led to the adoption of the FCFS method which subsequently resulted in the allotment of Spectrum at a throw away price.

The TRAI's recommendations of `No Cap' on the number of players in 2003 might have been appropriate when players were few, availability of Spectrum was not a constraint, competition was not cut throat and teledensity was low. But recommending the same principle in 2007 was in the considered view of the Committee ill conceived in view of the sea change in the Telecom Sector. The Committee could not find the basis on which TRAI recommended `No Cap' on the number of players in 2007 when there was a shortage of Spectrum

unlike in 2003-04. Moreover, how prudent it is to ration limited Spectrum against unlimited players it is for TRAI to think and answer more so when the Authority was ignorant of the availability of Spectrum while recommending `No Cap". The Committee note that the TRAI advocated in May, 2010 that keeping in view the scarcity of Spectrum and the need to provide the contracted Spectrum to the existing licences, no more UAS licence linked with Spectrum should be awarded. It so appears that the DoT were presciently awaiting for this recommendation and they immediately adopted it to stop allocation of UAS licence to the remaining applicants of 2007-08. It is another classic example of `cherry-picking' of the TRAI's recommendation as well as the Authority's flip flops in giving clear cut recommendation at an appropriate time.

The Committee note that the contractual amount of Spectrum for the first, second and third operators for CMTS licences was a cumulative maximum of upto 4.4 MHz+4.4MHz in the 900 MHz band based on appropriate justification. In 2001, this contractual amount was increased to 6.2 MHz+6.2MHz with retrospective effect from 1st August, 1999 and subject to availability and justification, based on the TRAI's recommendation. In 2002, it was increased to 8MHz+8MHz and further upto 10MHz+10MHz based on a certain subscriber base which was also revised from time to time. In this context, Audit pointed out that several operators are holding additional Spectrum, much above their contractual agreements, in various Circles which if priced would give the Government an additional flow of revenue to the tune of Rs.36,993 crore. The Committee find that in May, 2010 TRAI

recommended for charging the additional Spectrum held by the operators beyond the licenced quantity which is under the consideration of the Government. The Committee are perplexed to note that while the DoT on the one hand is not processing the pending applications for licences due to non-availability of Spectrum, many existing operators are holding additional Spectrum without paying any upfront charges. Now that the TRAI has recommended charging a price for the additional Spectrum, which is under consideration of the DoT, the Committee impress upon both the Authority and the Department to take appropriate measures so that the additional Spectrum is charged commensurately with the market price so that the exchequer gets the requisite revenue. The Committee also desire that TRAI's February, 2011 recommendations on Spectrum pricing be given due consideration while charging for additional Spectrum.

The Committee also find that based on the studies made by the TRAI on NTP-99, international practices, various clauses in the UAS licences etc., the Authority recommended introduction of cross over or Dual Technology licences. Accordingly, the Department issued 35 Dual Technology licences in 2007-08 by charging the fees as was paid by the GSM operators in the same circle. Without going into the merits of the policy implemented in view of the TDSAT judgment in favour of Dual Technology licences, the Committee strongly feel that the price realized from these licences was grossly undervalued, as also pointed out in many quarters including by the C&AG. The Committee, therefore, exhort the DoT to calculate the possible losses on this count and recover it from the licensees.

One aspect that engages the attention of the Committee is the fact that worldwide, especially in the developed countries, the licensing and Spectrum related functions are actually performed by the Regulators and not by the Government unlike in India. The Committee consider such a practice as one of the main reasons for the DoT's arbitrary decisions in dealing with the consultation process with the Authority. The Committee, therefore, feel that the TRAI Act needs to be revisited and an inter-Ministerial group be constituted to have a comprehensive study on the feasibility of assigning the licensing and spectrum released function to the TRAI itself. On another important issue, the Committee would like the Government to have a relook at the appropriateness and prudence of the appointment of retired Secretaries of the DoT as the Chairman of TRAI for obvious reasons.

AUCTION OF 3G AND BWA SPECTRUM

The Committee note that the TRAI made its recommendation on auction and allotment of 3G Spectrum on 27.09.2006. The Authority recommended a reserve price of Rs.1010 crore for pan India allotment of 2.5 MHzx2.5MHz of 3G Spectrum. The Telecom Commission desired to double the reserve price to Rs.2020 crore for pan India operation of 3G services. In view of the divergent views of the TRAI and Telecom Commission, the matter was referred to the Cabinet Committee on Political Affairs and the Finance Ministry which suggested to double the reserve price to Rs.4040 crore. The matter was finally referred to a Group of Ministers which decided to keep a pan India reserve price of Rs.3500 crore per one block of 2.5MHz of Spectrum. The EGOM also decided to keep a pan India price of Rs.1750 crore for one block of 20 MHz of BWA spectrum. Thus auction of 3G Spectrum started on 9th April, 2010 and completed on 19th April, 2010 fetching the Government an amount of Rs.67718.95 crore. Similarly, auction of BWA spectrum started on 24th May, 2010 and completed on 11th June, 2010. In this case, the Government earned a

revenue to the tune of Rs.38543.31 crore. Thus a total amount of Rs.1,06,262.26 crore was garnered from the auction of 3G and BWA Spectrum, beyond the imagination of the Department. Unlike the procedure adopted for allotment of 2G Spectrum, the Committee find that the method adopted in the allotment of 3G and BWA Spectrum was quite fair and transparent, especially the manner in which differences of opinion among various entities were resolved. However, there was a slight controversy when BSNL and MTNL were given 3G Spectrum in advance in 2008. Of course, they paid the same amount as the highest bidder in the price discovered during the auction. Although the TRAI opined that level playing field has been compromised by allocating advance 3G Spectrum to BSNL and MTNL, some telecom experts like Shri B.K. Syngal has opined that there is no harm in allocating 3G and BWA Spectrum to BSNL and MTNL in advance because of their rural and social obligations.

The Committee are happy to note that the auction of 3G Spectrum through an open and transparent bidding process has established the true value of the finite scare resource. However, as apprehension has been raised at many quarters that by paying such hefty amount to get 3G Spectrum, the successful bidders might pass

on the burden to the consumers, the Committee impress upon the TRAI to keep a watch on the development in this regard and protect the interest of the consumer in tandem with the DoT.

The Committee would also like to urge upon the DoT to ensure effective roll out obligations of the operators after allotment of 3G Spectrum strictly in accordance with the licensing conditions and stringent penalty be imposed on the defaulting operators with a view to ensuring optimal and efficient utilization of Spectrum.