

REPORT

ON

**EXAMINATION OF APPROPRIATENESS OF PROCEDURES
FOLLOWED BY DEPARTMENT OF TELECOMMUNICATIONS
IN ISSUANCE OF LICENCES AND ALLOCATION OF SPECTRUM
DURING THE PERIOD 2001-2009**

BY

JUSTICE SHIVARAJ V. PATIL

FORMER JUDGE, SUPREME COURT OF INDIA

(ONE - MAN COMMITTEE)

SUBMITTED

ON

31.01.2011

AT

SANCHAR BHAWAN, NEW DELHI

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ORDER OF APPOINTMENT

"No. 49-1/2009-Admn.I
 Government of India
 Ministry of Communications & IT
 Department of Telecommunications
 Sanchar Bhavan, 20 Ashoka Road,
 New Delhi-110 001

Dated, the 13th December, 2010**OFFICE MEMORANDUM**

Subject: Setting up of a One-Man Committee to look into certain issues relating to Department of Telecommunications as per Terms of Reference.

It has been decided by the Competent Authority to constitute a One-Man Committee comprising Hon'ble Justice Shivraj V. Patil, retired Judge of the Supreme Court to examine the appropriateness of procedures followed by the Department of Telecommunications in issuance of licences and allocation of Spectrum during the period 2001-2009. The Terms of Reference of the Committee are as per Annexure.

2. The Committee shall be vested with the following powers :
 - (i) To call for any records in the Department of Telecommunications.
 - (ii) To call any official of the DOT to get a briefing on any matter relevant to the TOR of the Committee.
 - (iii) To call any official of the DOT to assist in obtaining or explaining any record.
 - (iv) To seek any additional administrative assistance or manpower required for the discharge of its functions.
3. The Headquarters of the Committee will be at New Delhi.
4. The Committee shall submit its report within a period of one month.
5. The Hon'ble Justice Shivraj V. Patil – One Man Committee will be entitled to facilities as per Government norms commensurate to the position held.

Sd/-

(Sudha Shrotria)

Joint Secretary to the Government of India"

"TERMS OF REFERENCE"

1. To study the circumstances and developments in the Telecom Sector that led to the formulation of the New Telecom Policy 1999 and subsequently, introduction of 4th Cellular Telecom Mobile Service (CMTS) licence in 2001.
2. To examine the internal (intra-departmental) procedures adopted by DoT during the period 2001-2009 for
 - a) Issue of telecom access service licences and
 - b) Allocation of Spectrum to all telecom access services licencees during the above period.
3. To examine whether these procedures were in accordance with extant policies and directions of DoT / Government.
4. To examine whether these procedures were followed consistently and if not, identify specific instances of :
 - a) Deviation from laid down procedures
 - b) Inappropriate application of laid down procedures
 - c) Violation of underlying principles of laid down procedures
5. To examine whether the procedures adopted were fair and transparent and were in keeping with the principles of natural justice and if not, identify the specific instances of lack of fairness and transparency.
6. To identify the deficiencies, if any, in the procedures as formulated and identify the public officials responsible for such deficiencies.
7. To identify the shortcomings and lapses, if any, in the implementation of the laid down procedures and identify the public officials responsible for such lapses.
8. To suggest remedial measures to avoid in future
 - a) Deficiencies in formulation of procedures and
 - b) Lapses in implementation of laid down procedures."

ORDER OF EXTENSION

“No. 49-1/2009-Admn.I
Government of India
Ministry of Communications & IT
Department of Telecommunications
Sanchar Bhavan, 20 Ashoka Road,
New Delhi-110 001

Dated, the 12th January, 2011

OFFICE MEMORANDUM

**Subject: Extension in the tenure of a One-Man Committee to look Into
certain issues relating to Department of Telecommunications**

The undersigned is directed to refer to para 4 of this Department's O.M. of even number dated 13th December, 2010 regarding the constitution of a One-Man Committee comprising Hon'ble Justice Shivraj V. Patil, retired Judge of the Supreme Court to examine the appropriateness of procedures followed by the Department of Telecommunications in issuance of licence and allocation of Spectrum during the period 2001-2009 and to state that it has been decided with the approval of the competent authority to extend the tenure of the One-Man Committee upto 31st January, 2011

Sd/-

(Malaya Shrivastava)

Joint Secretary to the Government of India

Copy to :

1. Hon'ble Justice Shivraj V. Patil
2. PS to Hon'ble MOC&IT/Hon'ble MOS(C&IT)(P)/Hon'ble MOS(C&IT)(K)
3. Secretary (T), Department of Telecom.
4. Member, Telecom Commission,
5. Administrator (USO) Fund), Department of Telecom
6. Advisor/Sr. DDGs/Wireless Advisor, Department of Telecom
7. JS(T)/JS(A), Department of Telecom
8. DDGs, Department of Telecom
9. Reception Officer, Sanchar Bhawan.

PREFACE

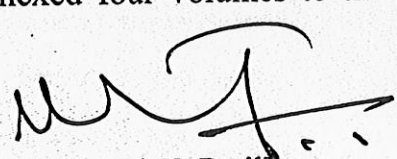
The order of appointment and the Terms of Reference state the purpose and scope of work of the Committee. It is clear from the Terms of Reference that the focus and consideration will be to examine the appropriateness of procedures formulated and followed by Department of Telecommunications (DoT) in issuance of access licences and allotment of spectrum to the access licencees, during the period 2001-2009 and to suggest remedial measures to avoid in future, deficiencies in formulation of procedures and lapses in implementation of laid-down procedures.

I started the work from the day of the appointment, with a view to complete it within the time-frame, if possible, without sacrificing the quality or content of the Report to be submitted. I almost took about ten days to understand the technical aspects of the subject, organizational structure and functioning of the DoT. Because of the nature and the volume of work, extension of time for completing the work became necessary. In this view, time was extended upto 31.01.2011. The office took some time to produce the required records pertaining to the period 2001-2009 i.e. 9 years, citing various reasons. The officers otherwise extended cooperation to facilitate the work. Whenever required, the concerned officers were called for briefing.

Available records and the files pertaining to issue of access licences and allotment of spectrum for the period 2001-2009 were examined with the assistance of Ms. Smita Singh and Mr. Ajay Kumar M., Advocates. Originals were seen, wherever available, in their absence, copies were perused, as it was informed that some of the files were seized by CBI.

In this report, each one of the eight Terms of Reference is dealt with separately and the documents referred are in the annexed four volumes to this report.

New Delhi;
January 31, 2011


[Justice Shivaraj V. Patil]
Former Judge, Supreme Court of India
(One-Man Committee)

TERM OF REFERENCE – 1

To study the circumstances and developments in the Telecom Sector that led to the formulation of the New Telecom Policy, 1999 and subsequently, introduction of 4th Cellular Telecom Mobile Service (CMTS) Licence in 2001.

Telecom Sector in India – beginning and growth

1.1 In 1839, the first telegraph link was experimented between Calcutta and Diamond Harbour covering 21 miles. In 1851 the telegraph line was opened for traffic, mostly for the official work of the East India Company. In course of time telegraphy service was available for public traffic. Indian Telegraph Act was enacted in 1885 which gave exclusive privilege of establishing, maintaining and working of "telegraphs"¹ to Central Government². It also empowered the Government to grant licences on such conditions and in consideration of such payments as it thought fit, to any person to establish, maintain or work a telegraph within any part of India.

1.2 As on 31.3.1948 there were 7330 telegraph offices, 321 telephone exchanges with 82,895 telephones, and in addition 28,155 telephones were with private and private branch exchanges. After independence Government of India took complete control over the telecom sector and brought it under the Post & Telegraph Department. One major step taken during that period was the establishment of a modern telecommunication manufacturing facility at Bangalore under the Public Sector in the name "Indian Telephone Industries Ltd". Development during the period 1948-1950 was continued by the Post & Telegraph Department on year to year basis.

¹ Section 3(1AA) of Indian Telegraph Act, 1885 defines "Telegraph" to mean any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic waves.

² Refer Section-4 of Indian Telegraph Act, 1885.

1.3 Until Sixth Five Year Plan the Telecom Sector did not catch the attention of Planners. There was an outlay of Rs.48 crores only towards development of telecom services in the First Five Year Plan launched in 1951. Rs.4,010 crores was the outlay for communications under the Seventh Plan (1985-1990). In the Eighth Plan (1992-1997) the allocation was raised to Rs.23,946 crores.

1.4 The initial phase of telecom reforms started in 1984 when the Centre for Development of Telematics (C-DoT) was set up for developing indigenous technologies and permissions were given to the private sector to manufacture subscriber-equipment. Thereafter, the Mahanagar Telephone Nigam Ltd., (MTNL) and Videsh Sanchar Nigam Ltd., (VSNL) were set up in 1986. The Telecommunications Commission came to be established in 1989. There was de-licensing of manufacturing of telecom equipment in 1991. The new Economic Policy of India was announced on July 24, 1991 and aimed at meeting India's competitiveness in global market; rapid growth of exports, attracting foreign direct investment and stimulating domestic investments. Accordingly to achieve standards comparable to the international facilities, the sub-sector of Value Added Services was opened up to private investment in July 1992 for the services; (a) Electronic Mail; (b) Voice Mail; (c) Data Services; (d) Audio Text Services; (e) Video Text Services; (f) Video Conferencing; (g) Radio Paging; (h) Cellular Mobile Telephone.

1.5 In respect of services (a) to (f) the companies registered in India were permitted to operate under licence on non-exclusive basis. As far as services covered by (g) and (h) mentioned above, keeping in view the constraints on the number of companies that could be allowed to operate, a Policy of selection through a system of tendering was followed for grant of licences. In 1994 there were three incumbents in the fixed service sector i.e., DoT, MTNL and VSNL. DoT operated all over the country except

Delhi and Mumbai. MTNL had operations in Delhi and Mumbai and VSNL provided international telephony.

1.6 Noting India also has large rural base with about 6 lakh Villages, for the rural development, quick and effective communication facility was of utmost importance so as to bring the Villages into main stream of socio-economic development and also for monitoring various developmental programmes. The Government also began giving emphasis to programmes for accelerating the economic growth of rural, backward and hilly areas in successive Five Year Plans.

1.7 However for want of funds the Government was unable to meet the growing demand for telephones. In fact people seeking telephone connections had to wait for years before they could get telephone connections; service rendered by the Government monopoly was also inadequate leaving people with unpleasant experiences such as wrong billing; telephone lines remaining dead for many days continuously; cross connections due to faulty / ill. maintained telephone lines and obsolete instruments and machinery in the telephone department.

1.8 Realizing that the Telecom Sector is one of the fast growing sectors having impact on Indian economy and in order to attain the goals of New Economic Policy, telecommunication services of world class were needed. In furtherance, it was considered necessary to focus and give high priority to the development of telecom services in the country. Accordingly, the Government formulated the National Telecom Policy -1994 (NTP 1994)³.

National Telecom Policy 1994

1.9 National Telecom Policy 1994 as formulated was announced on May 13, 1994 which was the first effective step towards de-regulation, liberalization and private sector participation. The objectives of the policy were:

³ See Annexure 1

- affording telecommunication for all and ensuring the availability of telephone on demand.
- providing certain basic telecom services at affordable and reasonable prices to all people and covering all villages.
- giving world standard telecom services; addressing consumer complaints, dispute resolution and public interface to receive special attention and providing widest permissible range of services to meet the customers' demand and at the same time at a reasonable price;
- creating a major manufacturing base and major export of telecom equipment having regard to country's size and development;
- protecting the defence and security interest of the country.

1.10 At the time of formulation of NTP 1994, telephone density in India was 0.8 per 100 persons as against world average of 10 per 100 persons. It was in fact lower than that of many developing countries of Asia like China (1.7), Pakistan (2) and Malaysia (13). In our country, there were about 8 million lines with a waiting list of about 2.5 million. Only 1.4 lakh villages out of a total of 5,75,490 were covered by telephone services. There were 1.00 lakh Public Call Offices (PCO) in the urban areas.

1.11 Looking to the economic growth and the re-assessed demand, the targets in VIII Plan were revised in NTP 1994 as under:

- (a) Telephone should be provided on demand by 1997.
- (b) All villages should be covered by telephone service by 1997.
- (c) A PCO should be provided for every 500 persons in the urban areas by 1997.

- (d) In order to reach international standards within VIII Plan period all Value Added Services available internationally should be introduced in India.

1.12 To realize the objectives of the policy and to achieve the targets set, additional resources were needed to supplement the allocation to this sector in the Eighth Plan. The total demand for telephone connections showed a rise of nearly 50% i.e., from 7.03 million as on 1.4.1992 rose to 10.5 million on 1.4.1994. Assessed by this demand the growth was likely to touch about 15.8 million by 1.4.1997. If this demand was to be met keeping in view the aims and objects of the Policy, extra resources to the tune of Rs.11,750 Crores were required and Rs.4,000 Crores more were required on account of additional rural connections. Even as per the VIII Plan, to meet modest targets fixed originally, there was a resource gap of Rs.7,500 Crores. Thus, the additional resources required to achieve the revised targets was over Rs.23,250 Crores. This was considered to be beyond the funding capacity of the Government and internal resources. Hence, private investment and association of the private sector was necessary in a big way to bridge the resource gap in order to achieve the revised targets set in NTP 1994.

1.13 NTP 1994 provided for continuing the policy of permitting companies registered in India to operate licences for electronic mail, voice mail, data services, audio text services, video text services and video conferencing on non exclusive basis and granting licences for operating radio paging and cellular mobile telephone services through a system of tendering and subject to the following criteria for their selection:

- (a) Track record of the company;
- (b) Compatibility of the technology;
- (c) Usefulness of the technology being offered for future development;
- (d) Protection of national security interests;

- (e) Ability to give the best quality of service to the consumer at the most competitive cost; and
- (f) Attractiveness of the commercial terms to the Department of Telecommunications.

1.14 The NTP 1994 provided that the companies registered in India would be allowed to participate in the expansion of telecommunication network in the basic telephonic services area. They would be required to maintain proper balance in their coverage between urban and rural areas coupled with conditions of operation that would include agreed tariff and revenue sharing arrangements.

1.15 It was realized and recognized that telecommunication was a vital infrastructure and technology intensive and therefore it was necessary that the administration of the Policy in the telecom sector had to make inflow of technology easy and the country should not be left behind in getting the full advantage of the emerging new technologies in the contemporary world and that at the same time it was necessary to encourage indigenous technology.

1.16 In relation to implementation of this Policy it was clearly stated that suitable arrangements ought to be made (a) to protect and promote the interest of the consumers; and (b) to ensure fair competition.

Circumstances and developments in the Telecom Sector leading to the formulation of New Telecom Policy 1999 (NTP 1999)

1.17 Consistent with requirement for private investment/involvement to bridge the resource gap, private sector participation was invited in phased manner for granting Licences. In the first phase, in 1994, after inviting tenders, on the basis of beauty parade⁴, licences were awarded to eight (8) CMTS operators, two in each of four metropolitan cities of Delhi, Mumbai

⁴ Beauty parade is a situation in which several organizations compete in order to persuade another organization to use their services. DoT adopted a process of competitive selection wherein price of spectrum was fixed to ensure optimum utilization by awarding spectrum to user/s who score highest against a group of pre-set criteria (such as rural coverage or fulfillment of rollout obligation).

(Bombay), Kolkata (Calcutta) and Chennai (Madras). In the second phase, in December 1995, after following competitive bidding process, 14 Cellular Mobile Telephone Service (CMTS) licences were awarded in 18 state circles, 6 Basic Telephone Service (BTS) licences were awarded in 6 state circles and paging licences were awarded in 27 cities and 18 state circles. No bids were received for Jammu & Kashmir and Andaman & Nicobar Islands Circles. Out of the 14 CMTS licences in private sector, only 9 were operational. The BTS by private operators commenced in a limited way in two out of six circles where licences were awarded.

1.18 Government also commenced licensing of Internet service provision by private operators and opened up Global Mobile Personnel Communications by Satellite (GMPCS) for which one provisional licence was given and issue of such licences to other prospective GMPCS operators was under consideration. Very Small Aperture Terminal (VSAT) services were liberalized for providing data services to closed user groups.

1.19 In terms of NTP 1994 and the targets stipulated therein what was achieved was one PCO per 522 urban population as against the target of one PCO per 500 urban population. There was coverage of 3.1 lakh villages as against the intended coverage of approximately 6 lakh villages and DoT had provided total telephone lines of 8.73 million as against the VIII Plan target of 7.5 million.

1.20 The privatization did not yield intended results fully. While there had been a rapid rollout of cellular mobile network in Metros and States, most of the projects were facing problems. Main reason according to the cellular and basic operators was that actual revenues realized from the projects were far lesser than the projections and that the operators were unable to arrange finances for their projects. As a result, some of the targets envisaged in NTP 1994 remained unfulfilled. The Government viewed this with concern as it adversely affected the further development of the

Telecommunication Sector and recognized the need to take a fresh look at the policy framework for Telecom sector.

1.21 In addition to some of the objectives of NTP 1994 having remained unfulfilled, there were other fast and far reaching developments in the telecom, Information Technology (IT), consumer electronics and media industries world-wide, due to tremendous advancement in telecom sector. Convergence of both market and technology was a reality that was forcing realignment of the industry. Telephone and broadcasting industries were entering each other's markets at one level while at another technology was blurring the difference between different conduit systems such as wireless and wireline.

1.22 As in most countries, separate licences were issued in our country for basic, cellular, Internet Service Provider (ISP), satellite and cable Television (TV) operators each with separate industry structure, terms of entry and varying requirement to create infrastructure. However, on account of convergence operators could use their facilities to deliver some services reserved for other operators necessitating a re-look into existing policy framework.

1.23 It was felt that Telecom policy framework was required to facilitate India's vision of becoming an IT super power and develop a world class telecom infrastructure in the country. On the directions of Prime Minister a high level Group on Telecommunications (GoT) was constituted on 20.11.1998⁵ having Terms of Reference *inter-alia* to make recommendations on proposed new Telecom Policy. On the basis of report of GoT a draft New Telecom Policy 1999 (NTP 1999) was formulated. After the approval of the Cabinet, NTP 1999 was announced to be effective from 1.4.1999⁶.

⁵ See Annexure 2

⁶ See Annexure 3

New Telecom Policy 1999

1.24 The NTP 1999 recognized that providing world class telecommunications infrastructure and information, was the key to rapid economic and social development of the country. Further, it was considered critical not only for the development of the Information Technology Industry, but also that it had wide spread ramification on the economy of the country. Added to this, it was anticipated that going forward in this sector would contribute to a major part of Gross Domestic Product (GDP) of the country. For these reasons it was considered of vital importance to the country that there should be a comprehensive and forward looking telecommunications policy.

Objectives of NTP 1999 were

- (i) to make available affordable and effective communications for the citizens, considering access to telecommunications is utmost important for achievement of the country's social and economic goals.
- (ii) to provide universal service to all uncovered areas including the rural areas and also provide high level services capable of meeting the needs of the country's economy by striking a balance between the two.
- (iii) to encourage development of telecommunication in remote, hilly and tribal areas of the country.
- (iv) to create a modern and efficient telecommunications infrastructure taking into account the convergence of IT, media, telecom and consumer electronics which will in turn propel India to become a IT superpower.

- (v) to convert PCOs wherever justified into Public Teleinfo centres having multimedia capability such as Integrated Services Digital Network (ISDN) services, remote database access, government and community information systems etc.
- (vi) to transform in a time bound manner, the telecommunications sector in both urban and rural areas into a greater competitive environment providing equal opportunities and level playing field for all players.
- (vii) to strengthen research and development efforts in the country and provide an impetus to build world class manufacturing capabilities.
- (viii) to achieve efficiency and transparency in spectrum management.
- (ix) to protect defence and security interest of the country.
- (x) to enable Indian Telecom Companies to become truly global players.

Targets set under NTP 1999

- (a) Make telephone available on demand by the year 2002 and sustain it thereafter so as to achieve a teledensity of 7 by the year 2005 and 15 by the year 2010.
- (b) Encourage development of telecom in rural areas making it more affordable by suitable tariff structure and make rural communication mandatory for all fixed service providers.
- (c) Increase rural teledensity from 0.4 to 4 by the year 2010 and provide reliable transmission media in all rural areas.
- (d) Achieve telecom coverage of all villages in the country and provide reliable media to all exchanges by the year 2002.
- (e) Provide Internet access to all district head quarters by the year 2000.

- (f) Provide high speed data and multimedia capability using technologies including ISDN to all towns with a population more than 2 lakh by the year 2002.

The new Policy framework focuses on creating an environment which would enable continued attraction of investment in the sector and allowed creation of communication infrastructure by leveraging on technological development.

Categories of Telecom Service Providers under NTP 1999

1.25 The new Policy framework categorized 8 services in telecom sector, namely; (i) Cellular Mobile Service Providers (CMSPs), Fixed Service Providers (FSPs) and Cable Service Providers, collectively referred as 'Access Providers'; (ii) Radio Paging Service Providers; (iii) Public Mobile Radio Trunking Service Providers; (iv) National Long Distance Operators; (v) International Long Distance Operators; (vi) Other Service Providers; (vii) Global Mobile Personal Communication by Satellite (GMPCS) Service Providers; (viii) V-SAT based Service Providers. The new Policy dealt with and provided the framework for all these categories of telecom Service Providers.

1.26 The NTP 1999 stipulated that the Government would invariably seek TRAI's recommendations on the number and timing of new licences before taking decision on issue of new licences in future.

1.27 The NTP 1999 stated that forward looking changes in legislation in so far as Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933 were essential.

CMSPs under NTP 1999

1.28 The New Policy framework in relation to CMSPs made following provisions:

- (i) CMSPs shall be permitted to provide mobile telephony services including permission to carry its own long distance traffic within their service area without seeking an additional licence.
- (ii) Direct interconnectivity between licensed CMSP's and any other type of service provider (including another CMSP) in their area of operation including sharing of infrastructure with any other type of service provider shall be permitted.
- (iii) Interconnectivity between service providers in different service areas shall be reviewed in consultation with Telecom Regulatory Authority of India (TRAI) and the same would be announced by August 15, 1999 as a part of the structure for opening up national long distance.
- (iv) The CMSP shall be allowed to directly interconnect with the VSNL after opening of national long distance from January 1, 2000.
- (v) The CMSP shall be free to provide, in its service area of operation, all types of mobile services including voice and non-voice messages, data services and PCOs utilizing any type of network equipment, including circuit and/or packet switches, that meet the relevant International Telecommunication Union (ITU)/Telecommunication Engineering Center (TEC) standards.
- (vi) CMSP would be granted separate licence, for each service area. Licences would be awarded for an initial period of twenty years and would be extendible by additional periods of ten years thereafter. For this purpose, service areas would be categorized into the four metro circles and Telecom circles as per the existing policy. CMSP would be eligible to obtain licences for any number of service areas.
- (vii) Availability of adequate frequency spectrum being essential not only for providing optimal bandwidth to every operator but also for entry of additional operators, based on the immediately available

frequency spectrum band, apart from the two private operators already licensed, DoT / MTNL would be licensed to be the third operator in each service area in case they want to enter, in a time bound manner. In order to ensure level playing field between different service providers in similar situations, licence fee would be payable by DoT also. However, as DoT is the national service provider having immense rural and social obligations, the Government will reimburse full licence fee to the DoT.

- (viii) Spectrum utilization can be reviewed from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, competition and other interest of public.
- (ix) The entry of more operators in a service area shall be based on the recommendations of the TRAI who will review this as required and no later than every two years.
- (x) CMSP operators would be required to pay a one time entry fee. The basis for determining the entry fee and the basis for selection of additional operators would be recommended by the TRAI.
- (xi) Apart from the one time entry fee, CMSP operators would also be required to pay licence fee based on a revenue share.
- (xii) Appropriate level of entry fee and percentage of revenue share arrangement for different service areas would be recommended by TRAI in a time-bound manner, keeping in view the objectives of the New Telecom Policy.

Fixed Service Providers (FSPs) under NTP 1999

1.29 The New Policy framework in relation to FSPs made the following provisions:

- (i) FSPs shall be freely permitted to establish 'last mile' linkages to provide fixed services and carry long distance traffic within their service area without seeking additional licence.
- (ii) Direct interconnectivity between FSP's and any other type of service provider (including another FSP) in their area of operation and sharing of infrastructure with any other type of service provider was to be permitted.
- (iii) Interconnectivity between service providers in different services areas was to be reviewed by TRAI and the same would be announced by August 15, 1999 as a part of the structure for opening up of national long distance.
- (iv) FSP shall be allowed to directly interconnect with VSNL after the opening of national long distance from January 1, 2000.
- (v) The FSPs shall be permitted to utilize last mile linkages or transmission links within its service area made available by other service providers.
- (vi) The FSPs shall be free to provide, in their service area of operation, all types of fixed services including voice and non-voice messages and data services utilizing any type of network equipment that met the relevant International Telecommunication Union (ITU) / Telecommunication Engineering Center (TEC) standards.
- (vii) The FSPs shall be granted separate licence, on a non-exclusive basis, for each service area of operation initially for a period of twenty years which would extend by additional periods of ten years. The FSPs were eligible to obtain licences for any number of service areas.

- (viii) While market forces will ultimately determine the number of fixed service providers, during transition, number of entrants have to be carefully decided to eliminate non serious players and allow new entrants to establish themselves. Therefore, the option of entry of multiple operators for a period of five years for service areas where no licences have been issued was adopted. The number of players and their mode of selection will be recommended by TRAI in a time bound manner.
- (ix) FSP licensees would be required to pay a one time entry fee. The appropriate level of entry fee and percentage of revenue share and basis for selection of new operators for different service areas of operation would be recommended by TRAI in a time bound manner keeping in view the objectives of the New Telecom Policy.
- (x) In so far as Wireless in Local Loop (WLL) is concerned, appropriate frequency spectrum being essential for not only providing optimal bandwidth to every operator but also for entry of additional operators spectrum utilization could be reviewed from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, competition and other interest of public.
- (xi) WLL frequency would be awarded to FSPs requiring the same, based on the payment of an additional one time fee over and above the FSP entry fee. Basis for determining the entry fee and basis for assigning WLL frequency shall be recommended by TRAI. It was also decided that all FSP operators utilizing WLL shall pay a licence fee in the form of a revenue share for spectrum utilization. This percentage of revenue share shall be over and above the percentage payable for the FSP licence. The appropriate level of entry fee and percentage of revenue share for WLL for different service areas of operation be

recommended by TRAI in a time bound manner, keeping in view the objectives of the New Telecom Policy.

Spectrum management under NTP 1999

1.30 On spectrum management NTP 1999 provided the following:

- (i) Proliferation of new technologies and the growing demand for telecommunication services had led to manifold increase in demand on spectrum and consequently it is essential that the spectrum is utilized efficiently, economically, rationally and optimally.
- (ii) There is a need for a transparent process of allocation of frequency spectrum for use by a service provider and making it available to various users under specific conditions.
- (iii) With the proliferation of new technologies it is essential to revise National Frequency Allocation Plan (NFAP) in its entirety so that it becomes the basis for development, manufacturing and spectrum utilization activities in the country amongst all users. NFAP was under review and the revised NFAP was to be made public by the end of 1999 detailing information regarding allocation of frequency bands for various services, without including security information.
- (iv) NFAP would be reviewed no later than every two years and would be in line with radio regulations of International Telecommunication Union (ITU).
- (v) Adequate spectrum is to be made available to meet the growing need of telecommunication services. Efforts would be made for relocating frequency bands assigned earlier to defence and others. Compensation for relocation may be provided out of spectrum fee and revenue share..

- (vi) There is a need to review the spectrum allocations in a planned manner so that required frequency bands available to the service providers.
- (vii) There is a need to have a transparent process of allocation of frequency spectrum which is effective and efficient and the same would be further examined in the light of ITU guidelines. In this regard following course of action shall be adopted viz.:
 - (a) spectrum usage fee shall be charged;
 - (b) an Inter-Ministerial Group to be called as Wireless Planning Coordination Committee as a part of the Ministry of Communications for periodical review of spectrum availability and broad allocation policy should be set up.
 - (c) Massive computerization in WPC Wing would be started in the next three months so as to achieve the objective of making all operations completely computerized by the end of the year 2000.

Universal Service Obligation (USO)

1.31 The Government acknowledged its commitment to meet Universal Service Obligation to provide access for basic telecom services at affordable and reasonable prices to all people. It sought to achieve the following universal objectives:

- (i) provide voice and low speed data service to the balance 2.9 lakh uncovered villages in the country by the year 2002.
- (ii) achieve Internet access to all district head quarters by the year 2000.
- (iii) achieve telephone on demand in urban and rural areas by 2002.

1.32 The resources for meeting the USO were to be raised through a 'universal access levy' which would be a percentage of the revenue earned by all the operators under various licences. The percentage of revenue share towards universal access levy would be decided by the Government in consultation with TRAI. It also sought that the implementation of USO for rural/remote areas would be undertaken by all fixed service providers who shall be reimbursed from the universal access levy fund. Other service providers shall also be encouraged to participate in USO provision subject to technical feasibility and shall be similarly reimbursed.

Entry of 3rd Cellular Operator

1.33 Public Sector Units viz. MTNL and BSNL were to be given CMTS licences in the year 1999-2000 as 3rd CMTS operators.

Circumstances and Developments leading to the introduction of 4th Cellular Telecom Mobile Service (CMTS) Licence in 2001

1.34 In terms of NTP 1999, if new operators are to be introduced, the same is to be based on the recommendations by TRAI. Accordingly three references were made seeking recommendations on the following:

- Quantum and structure of licence fee payable by Circle CMS providers in the extended period of licence from 11 to 15 years (Min. of Com. No. 842-153/98-VAS dt.7.10.98).
- Pursuant to NTP 99, the appropriate level of entry fee, percentage of revenue to be shared with the licensor, definition of revenue for the purpose and the basis of selection of new operators and any other issue considered relevant (Min. of Comm. No. 842-153/99-VAS (Vol.IV) dt.23.4.99).
- License fee arrangement for migration of the existing operators of Cellular Metro and Cellular Circles to the new NTP'99 regime (Min. of Comm. No. 842-153/99-VAS (Col.V) dt.12.7.99).

1.35 Pending receipt of recommendations from TRAI on aforesaid terms of references, on 22.7.1999 DoT (Value Added Services Cell) announced package for migration of existing licensees of Cellular and Basic Telecom services to NTP 1999 regime⁷. The package stipulated the cut off date for change over to NTP 1999 regime as 1.8.1999. In terms of this package licensee was required to pay one time entry fee and annual licence fee as a percentage share of gross revenue under the licence. It was notified that Government would take a final decision about revenue share to be charged as licence fee after receiving recommendations from TRAI and in the meantime 15% of gross revenue was fixed provisionally as licence fee.

1.36 TRAI vide D.O. No. 250-14/2000-Fin.(DF) (Vol.II) dated 23.6.2000⁸ submitted its recommendations on the above references. It considered the issues on which recommendations were sought as under:

- (A) Appropriate level of Entry fee, and basis of selection of new operators and entry of fourth operator.
- (B) Percentage of Gross Revenue as license fee
- (C) Definition of Gross Revenue.
- (D) Any other issues considered relevant

1.37 First issue was considered by TRAI under three sub-heads and its recommendations on the same are as under:

- (i) **Level of entry fee**
 - (a) DoT/MTNL as third operator as also the fourth operator to be introduced will be required to pay licence fee by way of share in their revenue at the same rate / percentage as recommended by TRAI for existing CMSPs who were allowed to migrate to

⁷ See Annexure 4

⁸ See Annexure 5

new revenue sharing arrangement in accordance with NTP 1999.

- (b) Fourth operator will also pay an entry fee which will be fixed through a process of bidding.
- (c) For two new operators each in J&K, Andaman & Nicobar and the second operator in both Assam and West Bengal Circles TRAI recommended quantum of licence fee as well as entry fee payable.

(ii) **Basis of selection of new operators**

- (a) All new operators barring DoT/MTNL be selected through a competitive process by multi stage bidding process preceded by a pre-qualification round.
- (b) Prospective operators will be required to meet pre-determined criteria in order to qualify to bid for the licence like financial strength and experience as Telecom Service Provider, minimum roll out obligation, technical plan, business plan, payment terms and other commercial conditions.
- (c) Prospective bidders meeting threshold criteria will be short listed for bidding for entry fee in next stage and no weightage be attached to pre-qualification criteria.
- (d) Same process of bidding will be adopted for selection of operators where two slots in the same circle are vacant viz., J&K and Andaman & Nicobar where no operator exists.

(iii) **Entry of fourth operator**

- (a) DoT/MTNL, the incumbent in basic services, are to enter the field of cellular mobile services as the third operator in terms of NTP 1999 with the existing availability of spectrum.

- (b) TRAI however, has no information about availability of spectrum either for the third or the fourth operator.
- (c) Market considerations indicate that in most circles there is a fair case for entry of the fourth operator. However, more than market the determining factor has to be availability of spectrum and its optimal utilization. Even when additional spectrum is released whether it should be utilized to augment the number of service providers or for improving the quality and coverage of already available services is to be considered.
- (d) A fair balance between the two objectives of increasing competition on one hand and improving the quality, coverage and price efficiency of the service on the other will have to be struck so that the larger objective of providing quality services at affordable prices is not jeopardized.
- (e) A view can be taken in the matter only after getting a full report from DoT on quantum of spectrum being made available for CMSPs, existing as well as proposed new entrants and its location.

1.38 On the second issue pertaining to percentage of Gross Revenue as licence fee TRAI recommended the licence fee on revenue sharing basis for the various vacant slots as under:

- (a) The percentage of revenue share for the 4 vacant slots in the Andaman & Nicobars and Jammu & Kashmir circles will be 10% of the Adjusted Gross Revenue(AGR);
- (b) The percentage of revenue share for incumbent migrating CMSPs in the 42 slots shall be 17% of the AGR;

- (c) The percentage of revenue share for the one slot each available in Assam and West Bengal will be 17% of the AGR;
- (d) The percentage of revenue for fourth operators slot in 18 circles and 4 metros will be 17% of the AGR; and
- (e) DTS/MTNL will pay the same percentage of revenue share as licence fee for the respective metros and circles in which they are licensed as the third operator.

1.39 On the third issue, TRAI recommended the definition of AGR for the purpose of levying licence fee as a percentage of revenue share, which was applicable to all categories of service areas for CMS.

1.40 It also recommended that the clauses of the existing Cellular Mobile Service Provider licences be modified to incorporate the above recommended entry criteria, selection procedure, entry and licence fee and a definition of revenue.

1.41 Accepting the recommendations of TRAI the DoT announced the guidelines on January 5, 2001. Thereafter, 17 new CMTS licences were issued to private companies as 4th Cellular Operators in September / October 2001, one each in 4 metro cities and in 13 telecom circles, based on multi-stage bidding for upfront entry fee.

Summation

1.42 On a study, it is noticed that for furtherance of new economic policy announced in the year 1991 telecommunication services of world class were needed. To achieve the said goal and also to provide affordable telecommunication for all; ensuring availability of the telephone on demand; providing basic telecom service at affordable and reasonable prices covering all villages, NTP 1994 was formulated. It was first effective step towards deregulation, liberalization and private sector participation.

However, it did not yield desired results despite privatization, the main reason being the cellular and basic operators did not realize expected revenue. The Government realizing the same, to avoid adversely affecting further development of telecommunication sector and also taking into account technological advancement that had taken place, recognized the need to have a fresh look at the policy for the telecom sector. In the light of the same and with a view to facilitate India's vision of becoming an IT super power and develop a world class telecom infrastructure in the country, a high level Group on Telecommunication was constituted and based on its recommendations, Union Cabinet approved the new Telecom Policy 1999, its principal objectives being to make available affordable and effective communications for achieving country's socio-economic goals; to provide universal service to all uncovered areas; to create modern and efficient telecommunication infrastructure; achieve efficiency and transparency in spectrum management; to provide competitive environment and level playing field for all players, amongst others. NTP 1999 requires that before taking decision on issue of new licences, Government shall seek recommendations of TRAI on number and timing of new licences and entry of more operators in a service area is required to be based on the recommendations of TRAI which is to review this requirement every two years. NTP 1999 with a view to provide relief to access service operators, who were facing financial troubles, brought in revenue sharing regime which contemplates payment of one time entry fee and licence fee based on revenue share. It also envisages review of spectrum utilization; efficient, economical, rational and optimal use of spectrum; and a transparent process of allocation of spectrum. As required under NTP 1999 based on recommendations of TRAI 4th Cellular operators were introduced by following multi-stage bidding process in the year 2001.

TERM OF REFERENCE-2

To examine the internal (intra-departmental) procedures adopted by DoT during the period 2001-2009 for:

- (a) Issue of telecom access services and
- (b) Allocation of spectrum to all telecom access services licencees during the above period.

2.1 Before examining the internal procedures adopted by DoT during the period 2001-2009, it is considered useful and convenient to look at its organizational structure and business/functioning of different wings and hierarchy.

Department of Telecommunications (DoT)

2.2 Under the Government of India (Allocation of Business) Rules, 1961⁹ made under Article 77(3) of the Constitution of India, Ministry of Communication and Information Technology (MoC&IT) having Department of Telecommunications (DoT) as one of the departments, is included in the First Schedule to the said Rules. In Second Schedule the subjects allocated to DoT are enumerated which include *inter-alia*:

- (i) Policy, Licensing and Co-ordination matters relating to telegraphs, telephones, wireless, data, facsimile and telematic services and other like forms of communications (para-1).
- (ii) Promotion of private investment in Telecommunications (para-4].
- (iii) Telecommunication Commission (para-7).
- (iv) Telecom Regulatory Authority of India (para-8).

⁹ See Annexure 6

- (v) Telecom Disputes Settlement and Appellate Tribunal (TDSAT) (para-9).
- (vi) Administration of laws with respect to any of the matters specified in this list, namely (para-10):-
 - a. The Indian Telegraph Act, 1885 (13 of 1885);
 - b. The Indian Wireless Telegraphy Act, 1933 (17 of 1933); and
 - c. The Telecom Regulatory Authority of India Act, 1997 (24 of 1997).

Telecommunications Commission (Telecom Commission)

2.3 By and in terms of resolution No.15/1/87-CAB-1 dated 11.4.1989¹⁰ of Government of India, Telecommunications Commission was set up. The constitution of the Telecom Commission is as under:

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

¹⁰ See Annexure 7 for constitution of Telecom Commission

2.4 There are four full time Members of Telecom Commission. They are Member (Services), Member (Production), Member (Technology) and Member (Finance).

2.5 There are four part time Members. They are Secretary-Department of Information Technology; Secretary-Finance, Department of Economic Affairs; Secretary-Planning Commission; and Secretary-Department of Industrial Policy & Promotion.

Telecom Commission is responsible for the following

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

2.6 Within the limits of budget provision approved by the Parliament, the Commission has the powers of Government of India, both administrative and financial for carrying out the work of the DoT.

2.7 As per Rules of Business for Telecom Commission, 1989¹¹, all cases of the nature specified in Annexure-A to it shall be brought before the Telecom Commission, which include *inter-alia*:

- (i) Important matters of Policy relating to telecommunications.
- (ii) Proposals for acceptance of any rules and procedures which involve significant deviations from normal rules and procedures of Government.

¹¹ See Annexure 8*

2.8 As per the Rules of Business of Telecom Commission seven days notice for every meeting shall ordinarily be given to each Member of the Commission provided that the Chairman for special reasons may convene a meeting at shorter notice. Attendance at these meetings is to be by Members in person. The quorum for meeting is three full time Members present in person including the Chairman provided that at meeting which the Chairman considers expedient should be held in his absence, the requirement shall be deemed to have been met if Chairman authorized another Member to place before the Telecom Commission and bring on record his views. The Member (Finance) is required to be ordinarily present at meetings of the Commission provided that if he is unable to attend meeting at which matters having financial implications are considered, he may authorize another Member to place before the Commission and bring on record his views.

2.9 Additional Secretary (Telecom) in DoT is the Secretary of Telecom Commission. Secretary of Telecom Commission is required to work under the general control of and perform such duties as may be assigned to him by the Chairman. The Secretary of the Commission is responsible for issuing notice of meetings and circulating agenda papers to the Members of Telecom Commission. He is required to prepare minutes of the meeting and after obtaining approval of the Chairman, circulate them to each Member. The Secretary of the Telecom commission is required to communicate the decisions of Telecom Commission to those concerned for necessary action and obtain for the information of Telecom Commission, periodical reports of action taken thereon.

2.10 All proposals for consideration by the Telecom Commission are required to be sent to Secretary to the Commission in the form of self contained memorandum stating the facts of the case, the points for decisions and recommendations, if any.

2.11 Cases which are urgent or for which, in the opinion of the Chairman, may be decided by circulation without convening a meeting of the Commission, shall be circulated to Members of the Commission, for recording their opinions, specifying the limit of time within which opinions are to be communicated to the Secretary of the Commission. If any Member does not indicate his opinion within the limit of time specified, he shall be presumed to have accepted the recommendations contained in the memorandum or the note circulated. In the event of difference of opinion the case is required to be submitted to the Chairman, whose decision will be final, but in financial matters, Member (Finance) has access to Finance Minister.

Wireless Planning and Co-Ordination (WPC) Wing

2.12 Wireless Planning and Co-Ordination (WPC) Wing in the DoT deals with policy of spectrum management, wireless licensing and frequency assignment. WPC was formed by and in terms of Office Memorandum No.1-E(5)/52 dated 8.10.1952¹² issued by Ministry of Communications having inter-alia the following functions:

- (i) co-ordination and assignment of frequencies to all wireless operations in India (para-i);
- (ii) regulating, planning and administering the usage of frequencies and the radio spectrum in India (para-ii);
- (iii) licensing, regulations and associated matters in the field of wireless, except Broadcast Receivers (para-v); and
- (iv) discharge all other responsibilities of the Ministry of Communications as the central coordinating and regulating authority

¹² See Annexure 9

of the country on all matters relating to wireless communications(para-vi).

2.13 All correspondence on the following subjects are required to be addressed to “Adviser, Wireless Planning and Coordination”:

- (i) Assignment of frequencies;
- (ii) Wireless transmitter licensing and regulations, import licences, and duty concession certificates;
- (iii) Inter-Departmental Wireless Board and all organs connected with it;
- (iv) Correspondence relating to the Wireless Coordinating Authority.

2.14 Spectrum Allocation Policy is contained in National Frequency Allocation Plan (NFAP) to be drawn periodically which is based on the International Radio Regulations framed and revised from time to time by International Telecommunication Union (ITU). NFAP (1981) has been revised in the years 2000, 2002 & 2008.

2.15 Channel of submission and level of final disposal of cases is defined in DoT¹³.

Chart annexed gives organizational structure of DoT at a glance.

¹³ See annexure 10 for compendium of channel of submission and final disposal of all case in DoT.

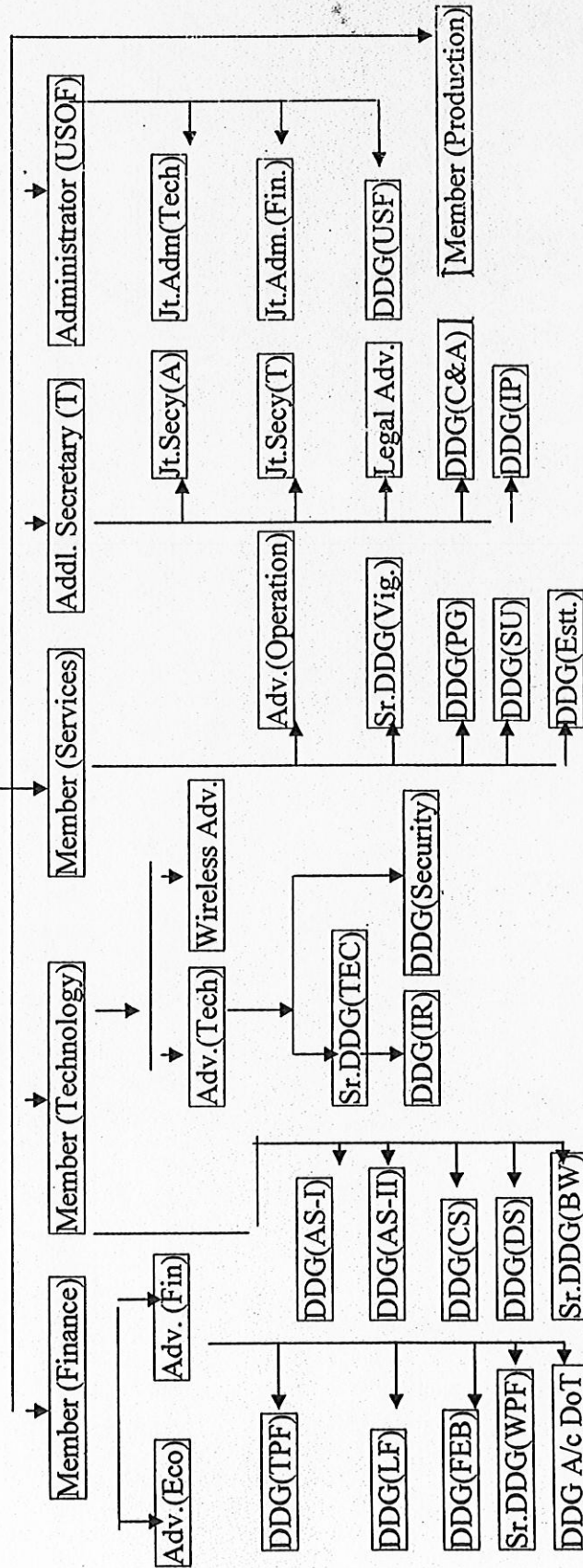
ORGANISATION CHART

Department of Telecommunications

Minister of Communications & Information Technology

Minister of State for Communications & Information Technology

Secretary DOT &
Chairman TC



LEGEND:

TPF: Tariff Public Enterprises Finance

AS: Access Services

WPF: Wireless Planning Finance

Eco: Economic

A: Administration

LF: Licensing Finance

TEC: Telecom Engineering Centre

CS: Carrier Services

DS: Data Services

Prod: Production

Est: Establishment

SR: Staff Relations

IR: International Relations

SU: Service Unit

JS: Joint Secretary

FEB: Finance, Establishment & Budget

PG: Public Grievances

LA: Legal Adviser

T: Telecom

Fin: Finance

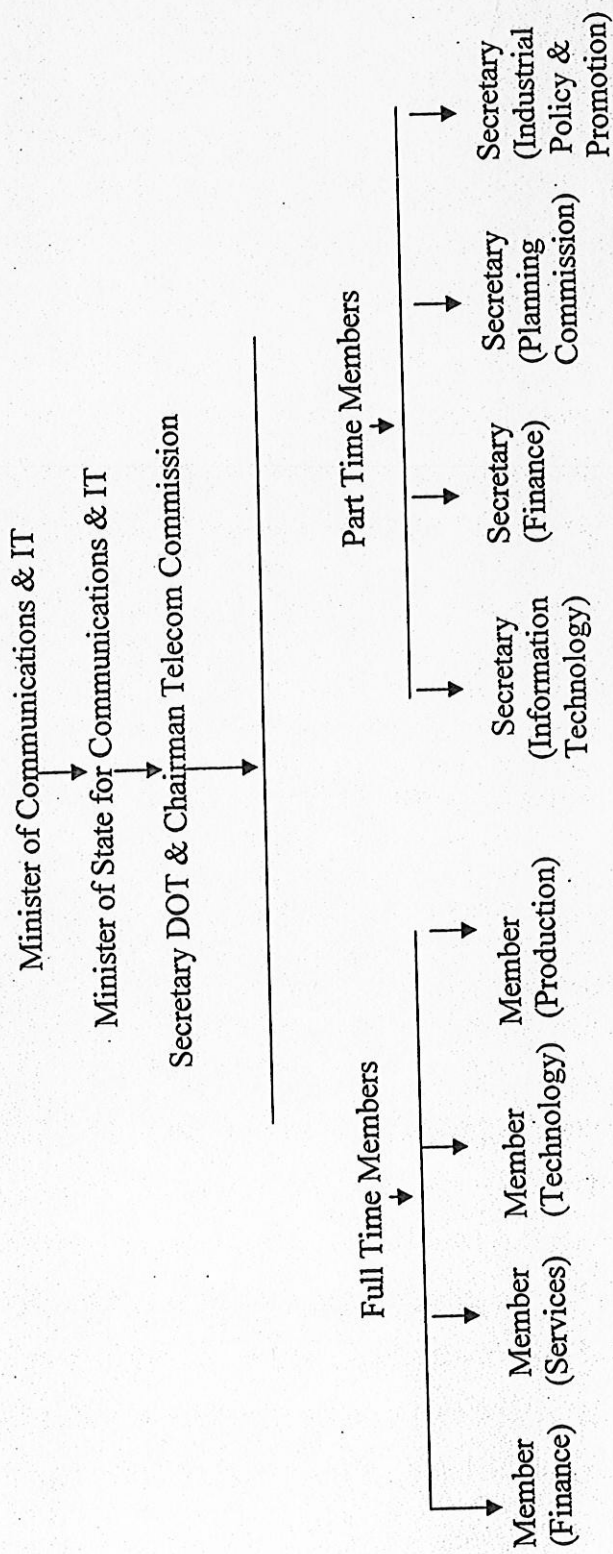
USOF: Universal Service Obligation Fund

VIG: Vigilance

BW: Building Works

DDG: Dy. Director General

CONSTITUTION OF TELECOM COMMISSION



Telecom Regulatory Authority of India (TRAI)

2.16 With the entry of private operators into telecom sector, proper regulation of the sector was considered appropriate. The important step in the institutional reform of Indian telecom sector was setting up of an independent regulatory body in 1997 with a view to assure investors that the sector would be regulated in a balanced, fair and competitive manner. Hence, the Government proposed to set up an independent Telecom Regulatory Authority, initially as a non-statutory body. However, giving due regard to the 22nd Report of the Standing Committee (10th Lok Sabha), it was decided to give statutory status to the regulatory authority to enable it to function effectively and independently. It is useful to note the following observation of the Supreme Court¹⁴ in this regard:

"The existence of a Telecom Regulatory Authority with the appropriate powers is essential for introduction of plurality in the Telecom sector. The National Telecom Policy is a historic departure from the practice followed during the past century. Since the private sector will have to contribute more to the development of the telecom network than DoT / MTNL in the next few years, the role of an independent Telecom Regulatory Authority with appropriate powers need not be impressed, which can harness the individual appetite for private gains, for social ends. The Central government and the Telecom Regulatory Authority have not to behave like sleeping trustees, but have to function as active trustees for the public good."

2.17 By virtue of Telecom Regulatory Authority of India Act, 1997 (TRAI Act), TRAI was established. It is a body corporate, consisting of a Chairperson and not more than two full time members and not more than two part time members appointed by Central Government¹⁵. The Chairperson and other members of TRAI are appointed from amongst persons who have special knowledge of and professional experience in telecommunication industry, finance, accountancy, law, management or

¹⁴ See Delhi Science Forum & Ors. Vs. Union of India & Anr. (1996) 2 SCC 405 para-31.

¹⁵ See Section-3 of TRAI Act, 1997.

consumer affairs¹⁶. The TRAI Act was amended in 2000 to restore functional clarity and improve regulatory quality.

Powers and functions of TRAI

Recommendatory functions

2.18 TRAI has powers to make recommendations either *suo motu* or on request from the licensor on the following matters¹⁷:

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

2.19 The recommendations of Authority are not binding upon the Central Government¹⁸. However, it is mandatory for the Central Government to seek recommendations of TRAI in respect of matters specified in (i) and (ii)

¹⁶ See Section-4 of TRAI Act, 1997.

¹⁷ See Section-11(1)(a) of TRAI Act, 1997.

¹⁸ See first proviso to Section-11(1)(a) of TRAI Act.

above in respect of new licence to be issued to a service provider and it is required to forward its recommendations within a period of 60 days from the date on which the Government sought the recommendations¹⁹. Central Government can issue a licence to a service provider if no recommendations are issued from TRAI within said period or within such period as may be mutually agreed upon between the Central Government and TRAI²⁰. If the Central Government, having considered that recommendations of TRAI, comes to a *prima facie* conclusion that such recommendations cannot be accepted or needs modifications, it is required to refer the recommendations back to TRAI for its reconsideration, and TRAI may within 15 days from the date of receipt of such reference, forward to Central Government, its recommendations after considering the reference made by Government. After receipt of further recommendations, if any, Central Government is required to take final decision²¹.

2.20 Supreme Court in the case of *Cellular Operators Association of India and others Vs. Union of India and others* reported in (2003) 3 SCC 186, has observed as under:

"Due weightage has to be attached both to the recommendations of TRAI which consists of an expert body as well as the recommendations of GOT-IT ..."

2.21 TDSAT in its judgment dated 27.9.2003 in Petition No.5/2002 while discussing the role, functions and duties of TRAI as also the manner in which Government is required to act on the recommendations of TRAI held as under:

"..... To us it appears that we have to adopt a constructive and purposeful approach in interpreting the provisions of Section 11 and we cannot accept an argument which strikes at the bottom of very existence of the Authority. It is undeniable that Authority is an expert body constituted under the Act and

¹⁹ See second proviso to Section-11(1)(a) of TRAI Act.

²⁰ See fourth proviso to Section-11(1)(a) of TRAI Act.

²¹ See fifth proviso to Section-11(1)(a) of TRAI Act.

it has been held to be so by the judgment of the Supreme Court in the case of Cellular Operators Association of India & Ors. Vs. Union of India & Ors. – (2003) 3 SCC 186.”

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

Other functions of TRAI

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

2.23 Originally, TRAI was also empowered to adjudicate upon disputes among Service Providers or between the Service Providers and a group of Consumers on matters relating to technical compatibility and interconnection between the Service Providers, revenue sharing arrangement between Service Providers and quality of telecommunication services and interests of consumers. Since there was a great demand for a separate dispute settlement mechanism from all quarters, the TRAI Act, 1997 was amended in January 2000 and Telecom Disputes Settlement and Appellate Tribunal (TDSAT) was established with both original and appellate jurisdictions.

Ninth and Tenth Five Year Plans: policy perspective

2.24 The circumstances and the background leading to formulation of New Telecom Policy, 1999 (NTP 1999) have been examined in detail under the ToR-1. Before examining the internal (Intra-Departmental) procedures adopted by the DoT during the period 2001 to 2009 in the matter of issuing of Telecom Access Service Licenses and allotment of spectrum to all Telecom Access Services Licensees during the above period, a brief reference to relevant aspects relating to the telecom sector emanating from Ninth and Tenth Five Year Plans providing policy perspective, may be useful.

NINTH FIVE YEAR PLAN (1997-2002)

2.25 In tune with National Telecom Policy (NTP) 1994, Ninth Plan envisaged following major objectives:

- (i) Universal coverage or telephone on demand;
- (ii) Universal and easy accessibility;
- (iii) World standard services to the consumers at affordable prices;
- (iv) Demand-based provision of existing value-added services and introduction of new services;
- (v) Exports of telecom equipment and services as a major thrust area.

2.26 The Plan also took note of the operational problems faced by cellular and basic service providers. It envisaged working out of comprehensive response to said problems through a new Telecom policy. It also contemplated that if frequency spectrum permitted, the number of operators could be increased to ensure greater competition. This was followed by formulation of New Telecom Policy (NTP) 1999.

TENTH FIVE YEAR PLAN (2002-2007)²²

2.27 The major objectives envisaged for the sector in Tenth Plan were:

- (i) Affordable and effective communication facilities to all citizens.
- (ii) Provision of universal service to all uncovered areas, including rural areas.
- (iii) Building a modern and efficient telecommunications infrastructure to meet the convergence of telecom, IT and the media.
- (iv) Transformation of the telecommunications sector to a greater competitive environment providing equal opportunities and level playing field for all the players.
- (v) Strengthening R&D efforts in the country.
- (vi) Achieving efficiency and transparency in spectrum management.
- (vii) Protecting the defence and security interests of the country.
- (viii) Enabling Indian telecom companies to become truly global players.

2.28 Consistent with the objectives of NTP 1999 and the objectives envisaged in Tenth Plan, following were the specific targets:

- To endeavour to make available telephones by and large on demand by end of 2002-03 and sustain it thereafter.
- To achieve an overall tele-density of 9.91 by 31st March 2007.

²² See Annexure 11 for relevant extract of Tenth Five Year Plan.

- Achieve telecom coverage of all villages in the country by December 2002 and provide reliable transmission media in all rural areas.
- Provide reliable media to all exchanges by the end of March, 2003.
- Provide high-speed data and multimedia capability using technologies including ISDN to all towns with a population more than two lakhs by the end of March, 2003.

2.29 Keeping in view the growth prospective in telecom sector Tenth Five year Plan emphasized the need to treat the sector as an infrastructure sector for the next decade or so till required tele-density was achieved and the necessary support network was created, after which the sector could be treated as service sector. With a view to ensure optimum growth it was noted that Government's broad policy of taxes and regulation for telecom sector and mopping up of resources or revenue generation by the Government should not be a determinant of the policy governing the sector.

2.30 Considering the scarcity of Radio Frequency Spectrum (RFS) and its requirement for wireless telecom services, Tenth Plan was for greater focus on policy for allocating frequency spectrum. It emphasized the need for policy governing spectrum allocation and licensing to be such that the scarce resource was used optimally and did not become a constraint for growth.

The Tenth Plan indicated that;

- a) The spectrum policy needs to be promotional in nature; revenue considerations playing a secondary role;
- b) Pricing and allocation should ensure that available spectrum is utilized optimally;

- c) Spectrum pricing need to be based on relative demand and supply over space and time in dynamic manner. Opportunity cost to reflect the relative scarcity of the resource in a given situation.
- d) Spectrum pricing also needs to ensure the introduction and promotion of spectrum efficient technology.

2.31 Tenth Five Year Plan acknowledged the significance of private investment as well in Telecom sector in the following terms:

“Private investment is also expected to play a leading role in the expansion of telecom services during the Tenth Plan. In the area of value added services, the private sector would continue to play the dominant role. The quantum of investment by the private operators would basically get determined by the rate of return on such investments – both basic as well as value added services. Foreign Direct Investment (FDI) has also a major role to play in supplementing the resources of the domestic private sector as the scale of investment envisaged is large. To boost private sector investment, appropriate policy initiatives need to be undertaken”.

2.32 When enquired with the officials of Access Services (AS) Wing and WPC Wing it is informed that there is no office memorandum detailing comprehensively the procedures to be followed in processing applications for grant of access service licences or allotment of spectrum. It is stated that procedures followed during said period were based on certain guidelines and orders issued from time to time and that in the absence of guidelines and orders, certain practices have been followed. As such for gathering the internal procedures followed, looking to guidelines / orders / practices has become necessary.

2.33 Keeping in view what is stated above, internal procedures adopted by DoT during the period 2001-09 for (a) issue of Telecom Access Service

Licenses; and (b) allotment of spectrum to all Telecom Access Services licensees, are to be examined.

TOR2(a): Internal Procedure adopted by DoT during the period 2001-2009 in issuing Telecom Access Service Licences

2.34 During the period 2001-2009 totally 212 Telecom Access Service Licences have been granted. Internal procedure adopted in Department of Telecommunications (DoT) for issue of these Licences, for convenience, is divided into three periods:

- (i) 2001-2003;
- (ii) 2004-2007; and
- (iii) 2008-2009.

During 2001-2003 basic services and cellular services were treated separately as each required a separate licence and the procedure adopted was different for both services.

Re: Basic Service Licences during 2001-2003

2.35 DoT sought recommendations of TRAI in 1999-2000 for grant of fresh licences in 15 vacant telecom circles and additional licences in 6 circles where licences had already been issued, on specific issues i.e.; (a) No. of operators; (b) Selection criteria; (c) Licence fee structure; and (d) Other facets of licence fee conditions.

2.36 On 31.8.2000 TRAI gave its recommendations²³. It considered that there were not many takers for BSL in 15 new circles and also in 6 circles where one licence each had already been issued to private BSOs and the progress of roll out was rather slow. It further considered the limited size of market available to new entrants and paucity of frequency spectrum. It felt

²³ See Annexure 12

that there was no need to pre-determine any number of BSLs to be issued and limit the competition and that it be left to the market forces to determine the number of licensees. However, in the light of NTP 1999 which require licensing conditions to be imposed so as to preclude non serious players who may not be interested in the spread of tele-density in rural and under serviced urban areas and tend to confine their operations only to most lucrative pockets of market, it recommended laying down stringent criteria for roll out and stipulation of reasonable level of revenue share, entry fee and performance bank guarantee. Selection criteria stipulated *inter-alia* was financial soundness and experience in Telecom sector. On 25.1.2001 in No.10-2/2000-BS-II²⁴, DoT issued guidelines for grant of licence for basic services.

2.37 From the above, procedure for grant of Basic Service Licences can be gathered as follows:

- i) Basic telephone service licences could be granted without any restriction on number of operators.
- ii) Applicant had to satisfy the eligibility criteria as to *inter alia* minimum paid up equity capital, combined networth of promoters, experience in telecom sector and foreign equity etc.
- iii) Applicant had to submit the application in prescribed form with stipulated documents like business plan along with its funding arrangement for financing the project, detailed rollout plan etc...
- iv) Application was required to be decided so far as practicable within 15 days of submission of application and the applicant company was to be informed accordingly.
- v) In case of an applicant being found eligible, the applicant was required to deposit entry fee and submit Bank Guarantee/other

²⁴ See Annexure 13

documents and sign the licence agreement within three months from the date of issue of letter of Intent (LoI) failing which offer of grant of licence was to stand withdrawn at the expiry of permitted period.

- vi) In addition to entry fee, licence fee of 12%, 10% and 8% respectively of annual gross revenue was payable as licence fee for three categories of telecom circles A, B and C.
- vii) Before signing the licence agreement applicant was required to provide Performance Bank Guarantees (PBGs) as security meeting stipulated rollout obligations.
- viii) Applicant company also was required to submit Financial Bank Guarantee (FBG) on amount equivalent to entry fee for securing the payment of licence fee and other charges.
- ix) An additional revenue share of 2% of AGR earned from WLL subscribers was to be levied as spectrum charge for allocation of 5+5 MHz in paired band in 800/900 MHz band in a complete service area for wireless subscriber access. The same principle was to be followed for spectrum charges in 1800/1900 MHz band.
- x) For wireless access systems in local area not more than 5+5 MHz in 824-844 MHz paired with 869-889 MHz band was to be allotted to any basic service operator including existing ones on first come first served basis. The same principle was to be followed for allotment of frequency in 1800-1900 MHz for micro cellular architect based system.

2.38 On 4.5.2001 in file No. 10-2/2000-BS.II²⁵ in terms office memorandum guidelines dated 25.1.2001 for issue of licence for basic telephone service came to be amended to provide for detailing roll out obligations with reference to Short Distance Charging Areas (SDCAs). On

²⁵ See Annexure 14

the same day in file No. 10-1/2001-BS.II²⁶ an addendum to LoI regarding award of licence to provide basic telephone service came to be issued stipulating additional conditions to be complied before signing the licence agreement. As per addendum dated 4.5.2001 LoI additionally required (i) furnishing names of category-wise SDCAs to be covered in equal proportions during each phase of rollout obligation; (ii) furnishing additional PBG for non fulfillment of rollout obligations under various existing licences; and (iii) furnishing Deed of Guarantee / Indemnity Bond for fulfilling the pending rollout obligations under various existing licences.

2.39 The Chairman, Telecom Commission (Secretary, DoT) took a decision in File No. 10-1/2001-BA-II, 2/C dated 16.02.2001²⁷, relating to dealing with the deficiency in applications for grant of BSL, according to which (i) in case of any deficiency in the application, the applicant could be informed with the prior approval of Member (Production) and Member (Finance) to rectify the deficiencies within a reasonable period of time (say 30 days); (ii) in the event deficiencies are not rectified within the given time and the applicant not seeking extension of time for valid reasons, the file was required to be submitted to the Chairman, Telecom Commission for considering rejection of application; and (iii) in case, deficiencies were rectified and applicant was found eligible, file was required to be submitted to the Minister through Chairman, Telecom Commission for approval.

2.40 During this period, 22 Basic Service operators were issued licences.

Re: Cellular Mobile Telecommunication Service (CMTS) Licences during 2001-2003

2.41 By the communication No.842-153/99-VAS (Vol.IV) dated 23.4.1999 DoT sought recommendations of TRAI on the appropriate level of entry fee, percentage of revenue to be shared with the licensor, definition

²⁶ See Annexure 15

²⁷ Annexure 16

of revenue for the purpose and the basis of selection of new operators and any other issue considered relevant, in the light of NTP 1999.

2.42 TRAI forwarded its recommendations dated 23.06.2000, as to the basis of selection of new operators i.e., through competitive process by multi-stage bidding from amongst applicants meeting pre-determined eligibility criteria, and the entry fee to be determined on the basis of the highest bid. TRAI had no information about availability of spectrum for the 3rd and 4th operators though it felt that market conditions were supportive of entry of 4th operator, but considering that availability of spectrum and its optimal utilization was important for deciding entry of 4th operator, it stated that a view could be taken in the matter only after getting full report from DoT on quantum of spectrum being made available for CMSPs (existing as well as proposed new entrants). Said recommendations of TRAI are stated to have been approved by Telecom Commission with some modification as to definition of gross revenue. Based on the same with the approval of Minister for Communications (the Minister). DoT Licensing Cell (Value Added Service Group) vide No: 842-352/2000-VAS announced guidelines on January 5, 2001 for issue of CMTS Licences in specified service areas and also for filling up existing vacant slots [Andaman & Nicobar (2), West Bengal (1)]²⁸.

2.43 From the foregoing, the procedure that emerged for grant of CMTS licences during 2001-2003 was as under:

- (i) Selection of 4th cellular operator in a service area and filling up the existing vacant slots in some of the areas was to be on the basis of bidding process as mentioned in Annexure-II to the guidelines vide No.842-252/2000/VAS.

²⁸ See Annexure 17

- (ii) Bidder was required to meet the stipulated eligibility criteria as to extent of foreign equity, management control. Combined net worth of bidder and its promoters and experience in telecom sector etc.
- (iii) Licence was to be issued without any restriction on licensor to introduce new operators.
- (iv) Any bidder could apply for any number of service areas subject to fulfillment of all the conditions of entry by submitting required bid documents separately for each service area by the due date as prescribed in the tender.
- (v) Bidder had to submit along with the application, the rollout plan as also business plan along with its funding arrangement for financing the project. A promoter company could not have stakes in more than one bidder company from the same service area.
- (vi) The existing licensees could not bid for the same service area.
- (vii) The bidder was required to comply with the technical specifications, commercial, financial and operating conditions as prescribed by licensor.
- (viii) Successful bidder was required to pay one time entry fee based on final bid before signing licence agreement.
- (ix) Additionally licensee was also required to pay licence fee annually @17% of Adjusted Gross Revenue for metro cities and Telecom Circles (exception being 10% for Andaman & Nicobar Circles) as revenue share generated from the service in accordance with procedure prescribed in the licence agreement document.
- (x) Licence fee as revenue share payable annually as aforesaid included rent for the licence and also contribution towards (i) Universal Service Obligation (USO) (ii) Research and Development (R&D)

administration and regulation (iii) 2% revenue share towards Wireless Planning and Coordination (WPC) charges covering royalty payment for the use of cellular spectrum upto 4.4 MHz + 4.4 MHz.

- (xi) Bidder was required to submit Financial Bank Guarantee (FBG) and also Performance Bank Guarantee (PBG).

2.44 Following the guideline issued by DoT, bids were invited through advertisement in news papers and by adopting multistage bidding process. 17 Operators were issued CMTS licences.

2.45 After grant of licences to 4th cellular operator, DoT in terms of its letter No. 842-419/2002-VAS dated 24.12.2002 sought recommendations of TRAI on the issue of fresh licences to CMSPs (5th and 6th CMSPs). TRAI in terms of D.O. No. 111-5/2003-MN dated 20.2.2003²⁹ referring to its earlier recommendations on entry of 4th CMSP reiterated the need to address the problem faced by existing operators to have adequate spectrum for improving Quality of Service (QoS) norms. It also recommended that while there is no limit in principle to the number of BSOs who can enter, offering of WLL(M) service needed to be limited by availability of spectrum. Further taking note of scarcity of spectrum, TRAI emphasized that there has to be a clear view of quantum of additional spectrum which could be allotted to GSM cellular services and opined that induction of additional mobile service providers could be considered if there was adequate availability of spectrum for the existing service providers as well as for the new players. The recommendations of TRAI dated 20.2.2003 were accepted by Telecom Commission on 25.7.2003. The decision of Telecom Commission was approved by the Minister in August, 2003³⁰.

²⁹ See Annexure 18

³⁰ See Annexure 19

Re: Unified Access Service Licence (USAL) during 2004-2007

2.46 Before examining the internal procedure adopted for grant of telecom access licences during 2004-2007, it is considered appropriate to refer to the background leading to the introduction of UASL regime.

2.47 Having due regard to the development of technologies, reduction in wireless technology cost, growth and falling cost of wireless services, blurring of difference between the wireless and wireline services, increasing competition among said services, the converging tariffs for wireless services and international trend for non service specific licences through a process of authorization, TRAI *suo-motu* considered that the process of unified licensing should be initiated in India the need for which was also underscored in NTP 1999. Accordingly, it issued a consultation paper on unified licensing for basic and cellular services on 16.7.2003. Subsequently, it received suggestions that the scope of unified licensees should be extended to include services such as National Long Distance (NLD), International Long Distance (ILD) and Internet Services. Based on feed back received, TRAI offered its recommendations on unified licensing regime to DoT vide D.O. No.101-29/2003-MM on 27.10.2003³¹. The recommendations of TRAI on Unified Licensing Regime are summarized as under: -

- (i) Within six months "Unified Licensing" regime should be initiated for all services covering all geographical areas using any technology and finalized through consultative process, once "in principle" approval is received from the Government. The initiation of Unified Licensing would mean submission of recommendations by TRAI on the issue to the Government of India.
- (ii) Guidelines to be notified by licensor based on recommendations of TRAI for Unified License would include nominal entry fee, USO,

³¹ See Annexure 20

etc. and the charges for spectrum shall be determined separately. Considering spectrum is scarce resource it needed separate regulation and its distribution must achieve optimum/ most efficient utilization.

- (iii) Ultimate objective of Unified Licensing/authorization regime be achieved in two stage process. Unification of access services at circle level be taken up immediately. This be followed up with steps to define the guidelines and the rules for fully Unified License/authorization regime.
- (iv) Existing operators be given option to continue under present licensing regime or migrate to new Unified Access Licensing regime in the existing circles.
- (v) In Unified Access Licensing regime the service provider may offer basic and/or cellular services using any technology.
- (vi) Entry fee for migration to Unified Access Licensing regime for basic and cellular services at the circle level be the same as existing entry fee of the fourth cellular operator.
- (vii) Existing licence fee of cellular/basic service operators be the licence fee in the new circle Unified Licensing regime, i.e., 12%, 10% and 8% of adjusted cost revenue for category A, B and C circles respectively.
- (viii) Existing BSOs be allotted 5 + 5 MHz in 824-844 MHz paired with 869-889 MHz bands on first come first served (FCFS) basis. The same principle be followed for allocation of frequency in 1880-1900 MHz band.
- (ix) Existing operators needed improvement in efficiency of utilization of spectrum. TRAI shall provide its recommendations on efficient

utilization of spectrum, spectrum pricing, availability and spectrum procedure shortly.

- (x) Having regard to availability of spectrum introducing more competition desirable, but instead of introducing more cellular operators, it would be appropriate to have competition in Unified Licensing framework, which was to be initiated in six months.
- (xi) Introduction of additional mobile service providers in various service areas be considered if there was adequate availability of spectrum.

2.48 The recommendations of TRAI as to time and need of introduction of more cellular operators in UASL regime was contained in following terms: -

7.39 As brought out in Para-7.37 above, the induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum. As the existing players have to improve the efficiency of utilization of spectrum and if Government ensures availability of additional spectrum then in the existing Licensing Regime, they may introduce additional players through a multi-stage bidding process as was followed for 4th cellular operator.

2.49 In the meantime with the approval of Prime Minister, Group of Ministers (GoM) on telecom matters was constituted on 10.9.2003 in No. 937/171/2003-Cab³², giving Terms of Reference *inter-alia* to recommend how to ensure release of adequate spectrum needed for growth of telecom sector and to chart the course to a Universal License. On 30.10.2003, the GoM made the following recommendations:

"How to ensure release of adequate spectrum needed for growth of telecom sector

- (i) *Adequate spectrum be made available for unimpeded growth of telecom services, modalities for which will*

³² See Annexure 21

be jointly worked out by WPC of DoT and Defence Services.

- (ii) DoT and Ministry of Finance would discuss and finalise spectrum pricing formula, which will include incentive for efficient use of spectrum as well as disincentive for sub-optimal usages.
- (iii) Allotment of additional spectrum be transparent, fair and equitable avoiding monopolistic situation regarding spectrum allotment usage.
- (iv) Long term (5 to 10 years) spectrum requirement along with time frames would also be worked out by DoT.

To chart the course of Universal License

- (i) Scope of NTP 1999 may be enhanced to provide for licensing of Unified Access Service for basic and cellular license services and Unified Licensing comprising all telecom services. DoT may be authorized to issue necessary addendum to NTP 1999 to said effect.
- (ii) Recommendations of TRAI dated 27.10.2003 with regard to implementation of UAL regime for basic and cellular services may be accepted. DoT may be authorized to finalise the details of implementation with approval of Ministry of Communication and Information Technology, including the calculation of entry fee depending on the date of payment on the principles given by TRAI in its recommendations.
- (iii) Recommendations of TRAI in regard to course of action to be adopted subsequently in regard to implementation of fully Unified Licensing / authorizing regime may be approved and DoT may be authorized to finalise details for implementation with approval of Ministry of Communication and Information Technology in this behalf.
- (iv) Recommendations of TRAI in regard to additional entry fee payable by BSOs for providing WLL(M) service on which Government sought its recommendations based on judgment of TDSAT dated 8.8.2003 in the WLL(M) may be accepted".

Cabinet on 31.10.2003³³ considered and approved these recommendations of GoM.

2.50 On 11.11.2003 Office Memorandum came to be issued by Director (VAS-II), DoT notifying "Addendum to NTP 1999"³⁴ stating that Government has decided that there shall also be the following categories of licences for telecommunication services:

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

Thereafter, on 13.1.2005 TRAI gave its recommendations on unified licensing regime, as envisaged for initiating implementation of second phase contemplated in the recommendations of the TRAI dated 27.10.2003. On 10.7.2007 the DoT took a decision not to accept TRAI's recommendations dated 13.1.2005. The recommendation was not placed the matter before Telecom Commission.

2.51 In the meantime DoT on 11.11.2003 issued guidelines for Unified Access (Basic and Cellular) Service License³⁵ laying down the procedure for migration of existing operators to new UASL. It also provided that with the issue of said guidelines all applications for new Access Services Licence shall be in the category of Unified Access Services Licence. However, in these guidelines no specific procedure for grant of new UASL was prescribed. When things stood thus, some applications were made on 12.11.2003 for grant of UASL, in the form prescribed for erstwhile BSLs.

³³ See Annexure 22

³⁴ See Annexure 23

³⁵ See Annexure 24

2.52 At this stage Chairman TRAI by his letter No. Nil dated 14.11.2003³⁶ communicated to Secretary, DoT clarifying apropos telecon that entry fee for new Unified Licensee would be the entry fee paid by 4th Cellular Operator and in service areas where there is no 4th Operator, entry fee paid by the existing BSO fixed by Government.

2.53 On 17.11.2003 in file No. 842-439/2003-VAS,^{36A} Chairman, Telecom Commission (Secretary DoT) approved the decision to accept the applications made for grant of UASLs on 12.11.2003 and adopted procedure for the applications similar to the one adopted for BSL.

2.54 On 24.11.2003 on the basis of letter of Chairman of TRAI dated 14.11.2003 a decision was taken by the Minister³⁷ that entry fee for new applicants would be equal to the entry fee paid by 4th Cellular Operator and the entry fee for the existing BSOs fixed by the Government where there are no 4th Cellular Operators. It was also approved that such new licences in the category of UASL would be issued on FCFS basis on the basis of applications. No guidelines were issued detailing the procedure to be followed for grant of UASLs on the basis of the said decision of Secretary DoT dated 17.11.2003 and the decision of the Minister dated 24.11.2003. Said decisions were not published nor notified to prospective operators.

2.55 In the meantime, on 13.10.2003 DoT again approached TRAI regarding issuance of fresh licences for CMTS. On 4.11.2003 TRAI is stated to have provided its recommendations wherein it reiterated its recommendations on UASL given on 27.10.2003. It appears that these recommendations were not placed before Telecom Commission. Only after deciding on 17.11.2003 and 24.11.2003 to follow the procedure applicable to BSL for granting UASLs and also apply FCFS criteria and to collect entry fee from the new UAS licencees as was paid by fourth cellular

³⁶ See Annexure 25

³⁷ See Annexure 26

^{36A} See Annexure 99.

operator, the recommendations of TRAI dated 4.11.2003 were approved by the Minister on 22.12.2003³⁸.

2.56 After decision as aforesaid 28 new UAS Licences were issued in the year 2004.

2.57 In terms of Press Note No.5 (2005 series), Department of Industrial Policy and Promotion, Ministry of Commerce and Industries, Government of India, announced enhancement of Foreign Direct Investment ceiling in telecom sector from 49% to 74%³⁹. In the light of enhancement of FDI ceiling in telecom sector, with the approval of the Minister, DoT issued revised guidelines for UASL on 14.12.2005 bearing No.10-21/2005-BS.I(Vol.II)/49⁴⁰. Press Note 5/2005 was superceded by Press Note 3/2007⁴¹.

2.58 The procedure for grant of UASL, from what is stated above, is as under:

- i) Grant of UASL is to be on FCFS basis, on the basis of applications.
- ii) The applicant is required to fulfill stipulated eligibility criteria as regards extent of foreign equity, management structure, minimum equity of Indian promoter, networth, paid up equity capital, non-existence of substantial equity holding in any other operator etc.
- iii) Applicant can apply for licence in more than one service area subject to fulfillment of all the conditions of entry by submitting application/s in prescribed form for each service area separately.
- iv) Licences are to be issued without any restriction on Licensor to issue any number of licences for providing Unified Access Services in a Service Area (non-exclusive basis).

³⁸ See Annexure 27

³⁹ See Annexure 28

⁴⁰ See Annexure 29

⁴¹ See Annexure 30

- v) Applicant has to pay one time non-refundable entry fee based on LoI before signing agreement as prescribed (equivalent to entry fee paid by 4th entry operators).
- vi) In addition, licensee has to pay licence fee annually @10%, 8% and 6% of Adjusted Gross Revenue (AGR) for categories A, B and C service areas, respectively excluding spectrum charges.
- vii) Licensee shall pay spectrum charges in addition to licence fee on revenue share basis as notified separately from time to time by the WPC Wing.
- viii) Applicant shall submit FBG before the date of signing the licence agreement initially for securing payment of licence fee.
- ix) Applicant shall also submit PBG for meeting rollout obligations.
- x) Application shall be decided so far as practicable within 30 days of submission of application and applicant company shall be informed accordingly.
- xi) In case applicant is found to be eligible for grant of licence for UAS, a Letter of Intent (LoI) will be issued requiring deposit of entry fee and submission of Bank Guarantees/ other documents and signs the licence agreement within the period mentioned in LoI failing which offer of grant of licence is to stand withdrawn at the expiry of permitted period.
- xii) In case applicant is found ineligible for grant of UASL, applicant shall be informed accordingly.
- xiii) For wireless operations in SUBSCRIBER access network, the frequencies shall be assigned by WPC Wing of the Department of Telecom from the frequency bands earmarked in the applicable National Frequency Allocation Plan and in coordination with various

users. Initially a cumulative maximum of upto 4.4 MHz + 4.4 MHz shall be allocated in the case of TDMA based systems @200 KHz per carrier or 30 KHz per carrier or a maximum of 2.5 MHz + 2.5 MHz shall be allocated in the case of CDMA based systems @1.25 MHz per carrier, on case by case basis subject to availability.

- xiv) Additional spectrum beyond the above stipulation may also be considered for allocation after ensuring optimal and efficient utilization of the already allocated spectrum taking into account all types of traffic and guidelines / criteria prescribed from time to time. However, spectrum not more than 5 + 5 MHz in respect of CDMA system or 6.2 MHz + 6.2 MHz in respect of TDMA based system shall be allocated to any new Unified Access Services Licensee. The spectrum shall be allocated in 824-844 MHz paired with 869-889 MHz, 890-915 MHz paired with 935-960 MHz, 1710-1785 MHz paired with 1805-1880 MHz.
- xv) In the event, a dedicated carrier for micro-cellular architecture based system is assigned in 1880-1990 MHz band, the spectrum not more than 3.75 MHz + 3.75 MHz in respect of CDMA system or 4.4 MHz + 4.4 MHz in respect of TDMA system shall be assigned to any new Unified Access Services Licensee.

2.59 Twenty two new UASLs were issued in the year 2006 and one new UASL was issued in the year 2007.

Re: UASLs during 2008-2009

2.60 The period 2008-2009 is considered separately on account of further changes introduced by DoT in its procedure for grant of UASLs.

2.61 On 13.4.2007 DoT vide Letter No.16-3/2004-BS-II⁴² sought recommendations from TRAI on review of terms and conditions in the access provider licence as also on issue of limiting the number of access provider in each service area. On 17.07.2007 the Minister approved the decision to withhold processing of all pending UASL applications till receipt of recommendations from TRAI⁴³.

2.62 On 28.8.2007 TRAI gave its recommendations on review of licence terms and conditions of licence and as to capping of number of Access Providers⁴⁴ providing *inter-alia*:

- i) No cap be placed on number of access service providers in any service area.
- ii) DoT should examine the issue early and specify appropriate licence fee for UAS licensees who do not wish to utilize the spectrum.
- iii) There is a need to tighten the subscriber criteria for all the service areas so as to make it more efficient from the usage and pricing point of view. Further, in the category A, B and C service areas the subscribers are widely distributed in the service area and therefore the amount of spectrum required in these areas for the same number of subscribers as in a metro will be comparatively lower.
- iv) In order to frame a new spectrum allocation criterion, a multi-disciplinary committee may be constituted consisting of representatives from DoT/TEC, TRAI, WPC Wing, Cellular Operators Association of India (COAI) and Association of Unified Telecom Services Providers of India (AUSPI). The committee may be headed by an eminent scientist/technologist from a national level scientific institute.

⁴² See Annexure 31

⁴³ See Annexure 32 (see p. 14/N)

⁴⁴ See Annexure 33

- v) Enhance the present subscriber norms as an interim measure so that task of spectrum allocation is not stalled, in accordance with revision suggested by TRAI.
- vi) GSM and CDMA operators may be given additional spectrum beyond 2 x 4.4 MHz and 2 x 2.5 MHz respectively after they achieve required subscriber base and subject to reporting compliance of rollout obligations.
- vii) Any licensee wishing to get additional spectrum beyond 10 MHz in the existing 2G bands i.e. 800, 900 and 1800 MHz after reaching the specified subscriber numbers shall have to pay a one time spectrum charge at the rates indicated by TRAI on pro-rata basis for allotment of each MHz or part thereof of spectrum beyond 10 MHz.
- viii) All spectrum excluding the spectrum in 800, 900 and 1800 bands should be auctioned in future so as to ensure efficient utilization of this scarce resource.
- ix) The annual spectrum usage charge linked to the revenue of operators to be revised as below:

Spectrum	Current	Proposed
Upto 2X4.4 MHz	2%	No change
Upto 2X6.2 MHz/2.5 MHz	3%	No change
Upto 2X8 MHz	4%	No change
Upto 2X10 MHz	4%	5.00%
Upto 2X12.5 MHz	5%	6.00%
Upto 2X15 MHz	6%	7.00%
Beyond 2X15 MHz	--	8.00%

- x) A licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensee using the alternative technology or which would be paid by a new licensee going to use that technology.
- xi) Regarding inter se priority for spectrum allocation, when the existing licensee becomes eligible for allocation of additional spectrum specific to the new technology, such a licensee has to be treated like any other existing licensee in the queue and the inter se priority of allocation should be based on the criteria that may be determined by the Department of Telecommunications for the existing licensee.

2.63 The recommendations of TRAI dated 28.8.2007, received by DoT on 29.8.2007, were examined by an internal Committee of DoT which was constituted on 21.9.2007.

2.64 Pending consideration of the said recommendations of TRAI, on 24.9.2007 the Minister took a decision to fix a cut-off date for the receipt of applications for UASL as 1.10.2007⁴⁵. On the same day a Press Release came to be issued notifying cut off date⁴⁶.

2.65 On 9.10.2007 Deputy Secretary (Admin.) issued notice No.1/8/2007-TCO⁴⁷ notifying meeting of internal Telecom Commission on 10.10.2007 at 11.00 a.m. which was subsequently postponed to 3.00 p.m. on the same day,⁴⁸ to discuss TRAI's recommendations on access service licences and other issues. Copy of the said notice was marked to the full time Members of Telecom Commission only. It is informed that this notice was issued pursuant to instructions of Joint Secretary (T) after discussing with Secretary (T). On 10.10.2007 DDG (AS) submitted a Note for

⁴⁵ See Annexure 34

⁴⁶ See Annexure 35

⁴⁷ See Annexure 36

⁴⁸ See Annexure 37

approval of Telecom Commission⁴⁹, enclosing the report of the said internal Committee aforementioned along with comments of other officials. Strangely, the very recommendations of TRAI which were to be considered in the meeting of internal Telecom Commission were not placed before it. On 10.10.2007 in its meeting, internal Telecom Commission (comprising of full Members only) accepted the recommendations of TRAI⁵⁰ for no cap on number of licenses, but rejected the suggestion of the Committee for referring the recommendations back to TRAI for policy for reservation of spectrum for expansion of network of operators before spectrum is allotted to new licensees. It also rejected the recommendations of TRAI as regards specifying appropriate licence fee for UAS licensees who do not wish to utilize the spectrum. This decision was taken despite it having been noted that recommendations of TRAI did not provide any solution to paucity of spectrum while recommending no capping of number of access service licences as also that the issue of spectrum availability cannot be ignored while granting new licences. The decision of Telecom Commission was approved by the Minister on 17.10.2007.

2.66 Before the approval by the Minister, on 15.10.2007 the Chairman of TRAI had addressed a communication⁵¹ to the Secretary, DoT emphasizing the need that recommendations of TRAI are required to be given due weightage and also requesting for communicating the decision of the Department to TRAI in a formal manner. On 19.10.2007 TRAI had again addressed a communication⁵² to the Secretary, DoT emphasizing that the recommendations are inter-related and have a bearing in totality on telecom sector. It was emphasized that it would be unfair and misleading if any decision is taken and action is initiated without considering the recommendations in totality. It was requested that TRAI be formally consulted if there was any deviation from the totality of the

⁴⁹ See Annexure 38

⁵⁰ See Annexure 39

⁵¹ See Annexure 40

⁵² See Annexure 41

recommendations. It is understood that however, before taking the decision TRAI was not consulted again.

2.67 On 19.10.2007 DoT issued a Press Release⁵³ notifying inter-alia:

- i) The recommendations of TRAI, that there should not be no cap on the number of excess providers in any service area, has been considered and accepted by the Government;
- ii) The allocation of spectrum and grant of wireless licence shall be subject to availability. In case UAS licensee is not allocated spectrum due to non-availability, the licensee shall endeavour to role out services using wireless technology;
- iii) Government has accepted TRAI's recommendations and enhanced subscriber linked criterion for allocation of spectrum to UAS/CMTS licensees and has set up a Committee in Telecom Engineering Centre (TEC) to further study and give a report to the Government.
- iv) Existing private UAS licensees may be permitted to expand their existing networks by using alternate wireless technology, i.e., the present UAS licensee, who is using GSM technology for wireless excess, may be permitted to use CDMA technology and vise versa. Allocation of spectrum for alternate technology, CDMA or GSM, shall be subject to availability and on payment of prescribed sentry fee. Existing UAS licensees, who have already applied for allocation of spectrum for the alternate technology, shall also be considered for allocation of spectrum in alternate technology from the date of payment of prescribed fee;
- v) BSNL and MTNL being incumbent operators shall be permitted to usage of alternate technology and allocated spectrum for alternate technology without paying prescribed fee;

⁵³ See Annexure 42

- vi) Spectrum enhancement charges in addition to annual spectrum charges based on revenue share may be levied at the time of additional spectrum allotment to licensees beyond 10 Mhz. for GSM and 5 Mhz. for CDMA.

Press Note dated 19.10.2007 while providing for use of alternate wireless technology by operators and their entitlement for allotment of spectrum provided that existing UAS licensees, who have already applied for allocation of spectrum for alternate technology, shall also be considered for allocation of spectrum in alternate technology from the date of payment of prescribed fee.

2.68 On 26.10.2007 Member (Technology), DoT requested Department of Legal Affairs, Ministry of Law & Justice, to provide opinion of Attorney General / Solicitor General on grant of new UAS licences and approval for use of dual technology spectrum by UAS licensees⁵⁴. On 1.11.2007 the Ministry of Law and Justice opined that in view of importance of the case, it was necessary that whole issue is first considered by empowered Group of Ministers and that in the process legal opinion of Attorney General could be obtained⁵⁵.

2.69 On 2.11.2007 the Minister took the view that the opinion of Minister for Law and Justice was out of context and directed that existing policy for grant of new UASLs followed till then (process of FCFS) be continued and to consider the applications for grant of UASLs which were received till 25.9.2007 i.e., the date on which 1.10.2007 was announced as the cut off date⁵⁵. It was also decided to insert a clause in LoI that allotment of spectrum is not guaranteed and shall be subject to availability since availability of spectrum was not immediately guaranteed. It was also decided that since large number of applications had been received and a comprehensive evaluation of the applications had not been done, the same

⁵⁴ See Annexure 43

⁵⁵ See Annexure 44

shall be completed after taking detailed clarifications / compliance / documents from the applicants along with LoI.

2.70 On 7.11.2007 Minister of C&IT approved the following procedure for processing the pending applications for grant of UASLs:

- (i) The pending applications for UASL shall be processed as per the existing policy.
- (ii) To expedite the processing of applications, a committee (as already approved by Secretary (T), 14/C) consisting of Officers from AS, LF division and IP Cell shall examine the applications for eligibility and other parameters as per the guidelines / terms and conditions of licence agreement and government policy. Opinion of Legal Advisor, DoT is to be taken wherever required.
- (iii) Separate file for each applicant company shall be processed for obtaining the approval for issuance of LoIs. LoIs may be issued to eligible applicants, whose applications are compliant to the eligibility conditions. In case there are some minor observations/deviations in any application, the same may also be considered for issuance of LoIs. However, in such case, we may seek complete compliance along with the acceptance of LoI from the applicant company. This will also require approval of competent authority in each case separately based on the observations made by the examining committee.
- (iv) As per the existing policy, the LoIs were granted based on date of applications to satisfy the principle of first come first served basis.
- (v) Number of LoIs to be issued in each service area is to be decided.

- (vi) Application of M/s. TTML, M/s. TTSL and M/s RTL for dual technology may be considered as per direction of TDSAT on dual technology.
- (vii) Shri. R.K. Gupta, ADG (As-I) may be authorized for signing the LoIs on behalf of the President of India.
- (viii) Draft LoI which was to be legally vetted after the approval of policy and before issue.

2.71 On 22.11.2007 Department of Economic Affairs communicated to DoT its concerns as regards the rates obtained in 2001 being offered as entry fee even in 2007 without any indexation / current valuation and requested for being consulted⁵⁶. On 29.11.2007, Secretary DoT responded justifying non revision in entry fee⁵⁷.

2.72 On 30.11.2007 Member Finance put up a note taking a view that the issue of revision of rates (of entry fee) should be examined in depth before proceeding further⁵⁸.

2.73 On 4.12.2007 the Minister while showing displeasure with the Note of Member – Finance dated 30.11.2007 stated that matter of entry fee has been deliberated in the Department several times in the light of various guidelines issued by the DoT and the recommendations of TRAI and accordingly a decision was taken that entry fee need not be reviewed. Minister of C&IT further directed for implementation of approvals as regards LoI. It is directed to use the LoI proforma as issued in the past. It was further directed to obtain separate letter seeking duly signed copies of all the documents submitted at the time of applying for UASL as per existing guidelines⁵⁹.

⁵⁶ See Annexure 45

⁵⁷ See Annexure 46

⁵⁸ See Annexure 47 (see p. 18/N)

⁵⁹ See Annexure 47 (p. 20/N)

2.74 On 26.12.2007, the Minister in terms of DO No. 260/M(C&IT)/VIP 2007⁶⁰ informed the Prime Minister on various issues like criteria for allotment of UAS licences, use of dual spectrum, issue of new licences, issue of LoIs, etc. In the said letter it was mentioned that FCFS policy for granting LoI is followed by DoT for grant of UAS licences, which meant an application received first would be processed first and if found eligible will be granted LoI. It was further mentioned that FCFS is also applicable for grant of licence and compliance with LoI conditions and, therefore, any applicant, who complied with conditions of LoI, first was to be granted UAS licence first. It was further clarified that such issue never arose in the past as at a given point of time only one application used to be processed and LoI was granted and enough time was given for compliance of conditions of LoI. It was stated that DoT having adopted policy of no cap on number of UAS licence, a large number of LoIs are proposed to be issued simultaneously and, therefore, an applicant, who fulfilled the conditions of LoI, first would be granted licence first, though several applicants would be issued LoI simultaneously.

2.75 On 7.1.2008, a note was put up by Director (AS-I)⁶¹ seeking approval that policy of DoT as decided by the Minister and communicated to Prime Minister vide letter dated 26.12.2007 be treated as policy directive for licensing matters. The note was approved by Member (T) – Member (F) – Secretary (T) and the Minister. The Minister while approving directed that opinion of Solicitor General be obtained since he is appearing before TDSAT and High Court of Delhi. The Minister also approved Press Release after certain amendments⁶². On the same day, i.e. 7.1.2008, the file having been sent to the Solicitor General, he observed that issue regarding new LoIs are not before any court and what was proposed was fair and reasonable. It was also opined that the Press Release makes for

⁶⁰ See Annexure 48

⁶¹ See Annexure 47 (p. 22/N)

⁶² See Annexure 47 (p. 28/N)

transparency. However, appears that no proper memorandum of facts and point for opinion were placed before the Solicitor General.

2.76 On 10.1.2008 DoT issued a Press Note⁶³ on its website and the website Public Information Bureau at about 1.47 p.m. notifying that DoT had decided to issue LoI to all applicants eligible on the date of application, who applied upto 25.9.2007. It further notified as follows:

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

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

On the same day i.e. 10.1.2008, second Press Release⁶⁴ was issued by DoT on its website only at about 2.45 p.m. to the following effect:

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

The applicant companies who have submitted applications to DoT for grant of UAS licences in various service areas on or before 25.9.2007 are requested to depute their Authorised signatory /Company Secretary/ authorized representative with authority letter to collect response(s) of DoT. They are requested to bring the company's rubber stamp for receiving these documents to collect letters from DoT in response to their UASL applications. Only one

⁶³ See Annexure 49

⁶⁴ See Annexure 50

representative of the Company/group Company will be allowed. Similarly, the companies who have applied for usage of dual technology spectrum are also requested to collect the DoT's response.

All above are requested to assemble at 3:30 pm on 10.1.2008 at Committee Room, 2nd Floor, Sanchar Bhawan, New Delhi. The companies which fail to report before 4.30 P.M. on 10.1.2008, the responses of DoT will be dispatched by post.

All eligible LoI holders for UASL may submit compliance to DoT to the term of LoIs within the prescribed period during the office hours i.e. 9.00 A.M. to 5.30 P.M. on working days."

2.77 On 10.01.2008 between 3.30 p.m. to 4.30 p.m. LoIs were issued to applicants considered eligible in Committee Room, II floor, Sanchar Bhawan, New Delhi, where office of DoT is located. On the same day, four special counters were set up in the reception area at Ground Floor of Sanchar Bhawan for receiving LoIs between 3.30 to 5.30 p.m. The officers of DoT received the LoIs and recorded the time of receipt by referring to digital clock mounted on the wall⁶⁵.

TOR 2(b): Internal procedure for allotment of Spectrum to all Telecom Access Service Licensees during the period 2001-2009

2.78 Any telegraph licence holder intending to offer telecom access services which require use of Radio Frequency Spectrum (RFS/spectrum) has to obtain a separate Wireless Licence from WPC Wing under the provisions of Indian Telegraph Act, 1885 and Indian Wireless Telegraphy Act, 1933.

⁶⁵ See Annexure 51 being statement of Under Secretary (T), DoT narrating the sequence of events relating to the setting up of special counters for compliance of LoIs at the reception counter on 10.1.2008.

2.79 For broad understanding of the subject, a brief reference is made here to the nature, importance and use of RFS. Radio frequency and Geo-Stationary Satellite Orbit is a limited and scarce natural resource required by both Government and private sectors. RFS is the entire range of wavelengths of electro-magnetic radiation which is used as a carrier of wireless transmission and therefore it is a basic requirement for providing wireless services. It is a finite, but non consumable global material resource and commands high economic value based on demand and utility in Telecommunication Sector. Like other resources, RFS cannot be owned but used and shared amongst various countries, services, users, technologies etc. RFS is used and shared by various government and private sectors such as defence, police, intelligence, security agencies, public telecommunications, broadcasting, railways, public utility organizations, oil and electricity grids, atomic energy, mining and steel, shipping and airlines, private and public telecom operators, aeronautical and maritime safety communications, Radars, seismic surveys, rocket and satellite launching, earth exploration, natural calamities forecasting etc.

2.80 The demand on spectrum during recent decades has grown and is growing tremendously due to requirements of different types of Radio Communication Service having regard to proliferation of new and varied technologies.

2.81 Spectrum management involves administrative and technical procedures to ensure rational, efficient, economical and optimal utilization of Radio communication services so that fair and equitable access is available for all spectrum users of different kinds. Allocation of Radio frequencies is governed by International Treaties formulated under the aegis of International Telecom Union (ITU) and allocation is made at World Radio Communication conferences held periodically, on a regional basis for different services.

2.82 As noticed earlier in terms of Office Memorandum 1-E(5)/52 dated 8.10.1952⁶⁶ Wireless Planning and Co-ordination (WPC) Wing was set up in the Department of Telecommunications (DoT) for handling policy of spectrum management, wireless licensing and frequency assignment.

Allotment of spectrum to private telecom operators at inception

2.83 Private Cellular Mobile Telecommunications Service (CMTS) operators were permitted to establish, maintain and operate Cellular Mobile Telephone Service in metro cities and in telecom circles in 1994-1995. DoT (WPC Wing) in terms of Order No.R 11014/4/87-LR(PT) dated 20.7.1995⁶⁷ prescribed the rates of royalty charges.

2.84 Each cellular operator was allotted start-up spectrum upto 4.4 MHz + 4.4 MHz at the initial stage depending on the requirements at various places. Conditions of the Licence agreement between DoT and service providers stipulated that a cumulative maximum of 4.4 MHz + 4.4 MHz in the 900 MHz band.

Procedure for allotment of spectrum to CMTS and BSO licensees under New Telecom Policy (NTP 1999) regime

2.85 As per NTP 1999 cellular operators and basic service operators were treated as different categories of service providers and had to obtain separate service licences. While cellular operators for providing services invariably need spectrum and in the case of basic service operators the need for spectrum arose only in case of provisioning of Wireless in Local Loop (WLL).

Re: Cellular operators

2.86 As per NTP-1999, BSNL / MTNL were to provide cellular mobile telephone service, as third operator, besides two private cellular operators

⁶⁶ See Annexure 9

⁶⁷ See Annexure 52

licensed earlier. In its recommendations dated 23.6.2000⁶⁸ on entry of 4th cellular operator TRAI had observed that it had no information about availability of spectrum either for 3rd or 4th operator and opined that a view could be taken only after getting a full report from DoT on quantum of spectrum being made available for CMSPs, to the existing as well as the proposed new entrants in 900 MHz or 1800 MHz band. TRAI while recommending the quantum of revenue share as licence fee, considered that in the overall revenue share recommended as licence fee there should be two components viz. (a) an identifiable part to cover the cost of Universal Service Obligation (USO), Research and Development (R&D) and administration and regulation and (b) a reasonable amount of rent. The revenue share was also to represent a payment for use of frequency spectrum. Subsequently DoT having proposed to accommodate the 4th operator in GSM 1800 MHz band, in terms of its letter No.842-153/98-VAS (Vol.VIII) dated 10.10.2000 TRAI supported the proposal. But, emphasized the need for consideration of issue of paucity of spectrum.

2.87 In terms of guidelines announced on 05.01.2001 by DoT Licensing Cell (Value Added Service Group) vide No: 842-352/2000-VAS⁶⁹ for issue of licences to 4th cellular operators, regarding spectrum it was provided that licensee was to pay licence fee annually @ 17% of Adjusted Gross Revenue (AGR) for metro cities and Telecom Circles (exception being 10% for Andaman & Nicobar Circles). Licence fee as revenue share included rent for the licence and also contribution towards (i) USO (ii) R&D administration and regulation (iii) 2% revenue share towards WPC charges covering royalty payment for the use of cellular spectrum upto 4.4 MHz + 4.4 MHz. Any additional bandwidth if allotted was to attract additional licence fee as revenue share (typically 1% additional revenue share if bandwidth allocated is upto 6.2 MHz + 6.2 MHz in place of 4.4 MHz + 4.4 MHz).

⁶⁸ See Annexure 5

⁶⁹ See Annexure 17

2.88 On 22.9.2001 WPC Wing issued an order⁷⁰ requiring cellular licensees to pay spectrum charges with effect from 1.8.1999 (the cut off date of change over to revenue share regime of NTP 1999) on revenue share basis @2% of AGR annually towards WPC charges. Said revenue share covered royalty payment for the use of cellular spectrum upto 4.4 MHz+4.4 MHz. and any additional bandwidth, if allotted subject to availability and justification, shall attract additional royalty and licence fee as revenue share (typically 1% additional revenue share if bandwidth allocated is upto 6.2 MHz+6.2 MHz in place of 4.4 MHz+4.4 MHz). There was no separate notification issued in this regard except intimating COAI and cellular operators.

2.89 On 12.11.2001 DoT, VAS Cell with the approval of the Minister issued an order⁷¹ that new cellular licensees may be assigned 4.4 + 4.4 MHz in 1800 MHz band straightaway for the complete service area under the licence. It further provided that while allotting the spectrum of 4.4MHz + 4.4 MHz, the operators may be given an option to seek allotment of additional 1.8+1.8 MHz in the beginning itself subject to payment of additional 1% of revenue as licence fee. This was done without there being consideration by Telecom Commission or input from WPC wing. Even there was no recommendation from TRAI in this regard.

2.90 Accordingly 4th cellular operator was permitted in various Metro cities and Telecom Circles with a proviso in licence agreement that spectrum requirements of these operators will be met on case by case basis in the 1800 MHz band.

2.91 As per the order No.L-14041/06/2000-NTG⁷² dated 01.02.2002 issued by WPC Wing, decision was taken to assign additional spectrum upto 1.8 MHz+1.8 MHz to CMTS operators beyond 6.2 MHz+ 6.2 MHz.

⁷⁰ See Annexure 53

⁷¹ See Annexure 54

⁷² See Annexure 55

Any operator could apply for allotment of additional spectrum after reaching a customer base of 4 lakh or more under a licence in a service area, after which the process of allotment would be initiated. However, actual allotment of spectrum was to be made subject to availability and co-ordination on case to case basis after a customer base of 5 lakh or more was reached in the service area. The additional spectrum of 1.8 MHz+1.8MHz was to be in 1800 MHz band. For additional spectrum of 1.8MHz+1.8 MHz an additional charge of 1% of AGR was to be levied thus making total spectrum charges by operators getting additional spectrum @ 4% of AGR which charge was to cover allocation of further spectrum not exceeding 10 MHz+10 MHz per operator and such further allocation of additional spectrum was to be made only after a suitable subscriber base to be prescribed was reached. The said order dated 01.02.2002 was issued with approval of the Minister⁷³ without prior consideration by Telecom Commission and there being no recommendations of TRAI as well, in a matter having financial implication.

2.92 It is informed that 1st, 2nd, 3rd and 4th CMTS operators were allotted start-up spectrum of 4.4 MHz +4.4 MHz and additional spectrum after getting the same vacated from defence authorities on case to case basis.

2.93 Re: Basic Service Operators

2.94 On 31.8.2000 TRAI sent its recommendations⁷⁴ to DoT on grant of licences to basic service operators. Considering that there were not many takers for BSL in 15 new circles and also in 6 circles where one licence each had already been issued to private BSOs, the progress of roll out was rather slow and also considering limited size of market available to new entrants and paucity of frequency spectrum, TRAI felt that there was no need to pre-determine number of BSLs to be issued and limit the

⁷³ See Annexure 55

⁷⁴ See Annexure 12

competition. It recommended that it be left to the market forces to determine the number of licensees. On 25.1.2001 DoT issued guidelines⁷⁵ for issue of licence for basic services wherein it was provided *inter-alia* that for wireless operation in prescribed access network, frequency was to be assigned by WPC. Wing from the designated bands prescribed in NFAP-2000. It was provided that for wireless access systems in local area not more than 5+5 MHz in 824-844 MHz paired with 869-889 MHz band was to be allotted to any basic service operator including existing ones on first come first served basis (FCFS). The same principle was to be followed for allotment of frequency in 1800-1900 MHz for micro cellular architect based system. DoT in terms of No. 10-2/2000-BS-II dated 23.3.2001⁷⁶ prescribed procedure for allocation of spectrum on first come first served basis for basic service providers. It provided that on installation of Point of Presence (PoP) in Short Distance Charging Areas (SDCAs) a basic telephone service licensee shall be eligible to apply for allocation of WLL spectrum to the extent of 2.5 MHz + 2.5 MHz in the band of 824-844 MHz paired with 869-889 MHz for such SDCA. The eligibility for further allocation of WLL spectrum after meeting 1st, 2nd, 3rd and 4th phase rollout obligations was also stipulated.

2.95 TRAI in terms of D.O No.111-5/2003-MN dated 20.2.2003⁷⁷ while reiterating the need to address the problem faced by existing operators to have adequate spectrum for improving QoS norms recommended that though there is no limit in principle to the number of BSOs who could enter, but, offering of WLL(M) service needed to be limited by availability of spectrum.

2.96 It is informed that criteria for allotment of spectrum on first come first served basis as mentioned in guidelines dated 25.1.2001 for issuing licence to BSOs was adopted for grant of spectrum to all operators

⁷⁵ See Annexure 13

⁷⁶ See Annexure 56

⁷⁷ See Annexure 18

(including cellular operators). It is further informed that the date of receipt of application for grant of spectrum in the office of DoT was taken into account for reckoning priority amongst applicants.

Re: Allocation of spectrum in UASL regime

2.97 On 28.1.2003 the Minister of C&IT constituted a technical committee on efficient use of spectrum by cellular services under the chairmanship of Mr. R. Lalwani, the then Advisor (Technology) with Wireless Advisor, Senior DDG (VAS), DDG(V), Telecommunication Engineering Centre (TEC) and the representatives of COAI and Association of Basic Telecom Operators (ABTO) as its members, having the following terms of reference:

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

2.98 This Committee submitted its recommendations on 29.07.2003⁷⁸ which included criteria for allotment of spectrum beyond 8.0 MHz + 8.0 MHz on subscriber linked criteria amongst others.

2.99 The Minister approved these recommendations on 18.08.2003⁷⁹ without there being either consideration by Telecom Commission or recommendations of the TRAI. Allotment of additional spectrum beyond 8 MHz was made as approved by the Minister. This order was not notified to the existing operators or to the public. The order dated 1.2.2002 prescribing

⁷⁸ See Annexure 57

⁷⁹ See Annexure 58

spectrum charges beyond 6.2 MHz+6.2 MHz not exceeding 10MHz+10MHz @ 4% of AGR was applicable to allotment of spectrum beyond 8 MHz upto 10 MHz also.

2.100 On 27.10.2003 TRAI gave its *suo-motu* recommendations on unified licensing regime to Secretary, DoT⁸⁰ inter-alia:

"7.29 Existing three GSM Cellular Operators have been allocated Spectrum in 890-915 MHz paired with 935-960 MHz Band. The 4th Cellular Operator has been allotted spectrum in 1710-1785 MHz, paired with 1805-1880 MHz Bands. The allotted spectrum varies from 4.4+4.4 MHz to 10+10 MHz depending upon the number of subscribers in each service area. Existing BSOs shall be allocated 5+5 MHz in 824-844 MHz paired with 869-889 MHz bands on a first come first served basis. The same principle shall be followed for allocation of frequency in the 1880-1900 MHz band.

2.101 The GoM on telecom matters constituted on 10.09.2003⁸¹, after considering recommendations of TRAI dated 27.10.2003, submitted its recommendations on 30.10.2003 which were accepted by Cabinet on 31.10.2003⁸², which provided inter-alia:

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

⁸⁰ See Annexure 20

⁸¹ See Annexure 21

⁸² See Annexure 22

2.102 On 17.11.2003 DoT, VAS Cell sought opinion of TRAI⁸³ on the following spectrum related issues viz: (i) efficient utilization of spectrum; (ii) spectrum pricing; and (iii) spectrum allocation procedure.

2.103 TRAI on 19.11.2003 opined that in the interim period pending its recommendations, spectrum to new licensees could be given as per the existing terms and conditions⁸⁴.

2.104 Telecom Commission in its meeting held on 19.3.2004⁸⁵ considered the proposals submitted by WPC Wing prescribing spectrum charges beyond 10 MHz as under:

- (i) For additional spectrum of 2.5 MHz or part thereof beyond 10 MHz if assigned to a mobile service operator in Metro and other telecom circles, an additional charge of 1% of AGR will be levied, thus making total spectrum charge to be paid by such operator as 5% of AGR.
- (ii) Additional spectrum of 2.5 MHz or part thereof beyond 12.5 MHz, if assigned in metro and other telecom circles, an additional charge of 1% of AGR will be levied, thus making total spectrum charges as 6% of AGR.

2.105 On the same day, guidelines on spectrum allotment policy were also approved by Telecom Commission. The wireless users were required to pay for spectrum usage with effect from 1.6.2004. Based on the same order dated 15.4.2004 was issued specifying the charges for additional spectrum beyond 10 MHz + 10 MHz and 12.5 MHz + 12.5 MHz.⁸⁶

2.106 On 10.12.2004 WPC Wing issued an order stipulating criteria for assignment of 3rd and 4th CDMA carriers on service area basis to UASPs

⁸³ See Annexure 59

⁸⁴ See Annexure 60

⁸⁵ See Annexure 61

⁸⁶ See Annexure 62

and BTSPs using CDMA based system. However, allocation for specific requirement was to be made subject to availability of spectrum⁸⁷.

2.107 On 13.5.2005 TRAI submitted its recommendations⁸⁸ on effective utilization of spectrum, spectrum pricing and spectrum allocation procedure. This was not placed before Telecom Commission. Though on 15.8.2005, the Secretary DoT submitted the file to the Minister on 16.8.2005⁸⁹ for information with a note that that he will go through the recommendations and put up the file to the Minister for policy decision, file was returned only on 12.9.2006 and no further consideration appears to have taken place.

2.108 In the meantime on 23.2.2006 with approval of Prime Minister of India a Group of Ministers (GoM) comprising the Minister for Defence, Minister for Home Affairs, Minister for Finance, Minister for Parliamentary Affairs and Minister for Information & Broadcasting and Minister for Communication & Information Technology was constituted to look into the issues concerning vacation of spectrum with the following terms of reference:⁹⁰

- (a) "Determine the quantum of additional minimum and optimum requirement and identify frequency bands for major users, viz.,
 - (i) Cellular-mobile services, and
 - (ii) Defence and paramilitary forces,
 For both (i) short term (i.e. less than one year) and (ii) medium term (i.e., less than five years).
- (b) ...
- (c) ...
- (d) ...

⁸⁷ See Annexure 63

⁸⁸ See Annexure 64.

⁸⁹ See Annexure 65

⁹⁰ See Annexure 66

- (e) Suggest a Spectrum Pricing Policy and examine the possibility of creation of a Spectrum Relocation Fund. Indicate likely source and quantum of resources so generated and guidelines for the operation of the fund. Spectrum Pricing Policy may, as far as possible, aim at revenues fully offsetting the cost of vacation of spectrum.
- (f) Suggest guidelines to encourage and incentivise introduction of spectrum efficient technologies.

2.109 However, the Minister by his letter dated 28.2.2006 sought deletion of the term on spectrum pricing⁹¹. The said term was deleted in the revised terms of reference issued on 7.12.2006⁹². Subsequently, Secretary, Department of Economic Affairs, Ministry of Finance, by the communication dated 6.6.2007 sought inclusion of spectrum pricing in the Terms of Reference of GoM since for optimum utilization of spectrum a sound policy of spectrum pricing was necessary and methodology for spectrum pricing logically would follow the vacation of spectrum which is the main task of GoM⁹³. However, Secretary DoT vide letter dated 15.6.2007 declined any modification of terms of reference of GoM⁹⁴.

2.110 Meanwhile, on 29.3.2006 in supersession of all earlier orders relating to subscriber based criteria for allotment of GSM spectrum, new subscriber based criteria was issued by WPC Wing. Allotment of spectrum was subject to availability⁹⁵. On the same day i.e., 29.3.2006 in continuation of order dated 10.12.2004 regarding subscriber based criteria for allotment for 3rd and 4th CDMA carriers for spectrum, subscriber based criteria was prescribed to be followed for allotment of 5th and 6th CDMA carriers⁹⁶.

⁹¹ See Annexure 67

⁹² See Annexure 68

⁹³ See Annexure 69

⁹⁴ See Annexure 70

⁹⁵ See Annexure 71

⁹⁶ See Annexure 72

2.111 On 1.12.2006 in supersession of order dated 10.12.2004 relating to subscriber based criteria for release of 3rd and 4th CDMA carrier, new subscriber based criteria was stipulated for allotment of 3rd and 4th CDMA carrier in terms of order issued by DoT (WPC Wing)⁹⁷.

2.112 It is informed that the orders dated 29.3.2006 and 1.12.2006 were issued with the approval of the Minister without there being consideration by Telecom Commission.

2.113 On 28.8.2007 TRAI sent its recommendations⁹⁸ on review of licence terms and conditions and capping of number of Access Providers, which included revision in the rate of revenue share payable towards spectrum charges and also payment of spectrum enhancement charges in relation to additional spectrum allotment beyond 10 MHz + 10 MHz. It was also recommended that in future all spectrum excluding spectrum in 800, 900 and 1800 MHz band (2G bands) should be auctioned on the ground that auction of 2G bands would result in differential treatment to the new entrant vis-à-vis the incumbent. In other words to provide level playing field to them.

2.114 TEC, DoT was also simultaneously making study on the subject and recommended subscriber linked criteria.

2.115 On 6.11.2007 Press Release issued by DDG (AS), DoT⁹⁹ with the approval of the Minister notified that the Government had accepted in principle the technical report of TEC on spectrum efficiency on 31.10.2007. It further notified that a committee is being constituted in DoT to recommend the revision of present spectrum allocation criterion to licensed operators based on subscriber figures etc., in a scientific and practicable manner and the committee will have outside experts also; the committee will give its report within three weeks for finalization of spectrum

⁹⁷ See Annexure 73

⁹⁸ See Annexure 33

⁹⁹ See Annexure 74

allocation criterion for licensed operators; further allocation of spectrum to any category shall be determined on the basis of recommendations of the committee and directions of TDSAT, if any. It also mentioned that pending applications for grant of new UASL will be processed as per existing policy.

2.116 A committee in DoT was constituted which considered the report of TEC and gave its views regarding revision of subscriber based spectrum allocation criteria including allotment of additional spectrum in steps of 1 MHz.

2.117 On 9.1.2008 in supersession of existing orders relating to subscriber based criteria for allotment of GSM spectrum new subscriber based criteria was stipulated in terms of order issued by WPC Wing¹⁰⁰. In terms of another order of WPC Wing, in supersession of existing orders relating to subscriber based criteria for allotment of CDMA spectrum was revised¹⁰¹.

2.118 On 17.1.2008 WPC Wing issued an order in continuation of prior order dated 9.1.2008 relating to subscriber based criteria for allotment of GSM spectrum substituting new subscriber based criteria in line with TRAI recommendations as an interim measure¹⁰². On the same day i.e., 17.1.2008 another order was issued revising subscriber based criteria for allotment of CDMA spectrum consistent with recommendations of TRAI¹⁰³.

2.119 The orders/decisions brought out as above applied to the allotment of spectrum to access service providers during 2001 to 2009¹⁰⁴.

Summation

¹⁰⁰ See Annexure 75

¹⁰¹ See Annexure 76

¹⁰² See Annexure 77

¹⁰³ See Annexure 78

¹⁰⁴ See Annexure 79 for the details of spectrum allotted during 2001 to 2009

2.120 To enable better understanding of the internal procedures adopted by DoT during 2001 to 2009, the organizational structure and business/functioning of different wings and hierarchy have been examined, besides taking note of the policy perspective of the Ninth and Tenth Five Year Plans. The procedure adopted for grant of basic service licence during 2001-2003, CMTS licences during 2001-2003, Unified Access Service Licences during 2004 to 2007, UASLs during 2008 to 2009, allotment of spectrum to CMTS, BTS and UAS licencees have been deduced separately.

TERM OF REFERENCE – 3

To examine whether these procedures were in accordance with extant policies and directions of DoT/Government.

3.1 Under this term, whether the procedures adopted by DoT during the period 2001-2009 for issue of Telecom Access Service Licences and allocation of spectrum to all Telecom Access Services Licensees were in accordance with the extant policies and directions of DoT/Government, has been examined. While dealing with the ToR-1 & 2, detailed reference is made to policies as contained in NTP 1999, Ninth and Tenth Five Year Plans, the directions of DoT/Government and also the internal procedure adopted by DoT during the period 2001-2009. However, for immediate purpose, a brief reference to the extant policies is made here also.

- i) In terms of NTP 1999, entry of additional operators in a service area is required to be based on recommendations of TRAI to be made once in every 2 years. The Central Government is required to seek recommendations of TRAI in respect of new licences to be issued to a service provider as regards need, timing for introduction and terms and conditions of licence.
- ii) NTP 1999 introduced revenue sharing regime under which Cellular Mobile Service Providers are required to pay one-time entry fee and licence fee, based on revenue share. TRAI was required to make a recommendations as regards entry fee, selection of additional operators and the percentage of revenue share for Telecom Access Service Providers.
- iii) As per NTP 1999, spectrum utilization was to be reviewed from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirement of market,

competition and other interests of public. The process of allotment of spectrum to various operators had to be transparent.

- iv) The Tenth Five Year Plan document shows that issuance of Telecom Access Licences and/or allotment of spectrum was promotional in nature and the revenue considerations were to play a secondary role. However, opportunity cost had to reflect the relative scarcity of the resource.
- v) The spectrum pricing had to be finalized by DoT and Ministry of Finance as required in the Cabinet decision dated 31.10.2003.
- vi) Functions of the Telecom Commission include formulation of policies of DoT for approval of the Government, implementation of Government's policy in all matters concerning telecommunication and proposals for acceptance of any rules and procedures which involve significant deviations from normal rules and procedures of the Government. In case of difference of opinion amongst members of Telecom Commission in relation to a matter having financial implications, Member (Finance) has access to the Finance Minister.
- vii) Matters concerning policy of spectrum management, wireless licences and frequency assignment being within the domain of the Wireless Planning and Coordination (WPC) Wing of DoT, they need to be performed by it.
- viii) Rule-4 of Government of India (Transaction of Business)¹⁰⁵ Rules made under Article-77(3) of the Constitution, requires that when a subject concerns more than one Department, no decision be taken or order issued until all such Departments have concurred and failing such concurrence, a decision thereon is taken by or under the authority of the Cabinet. As per said Rule, unless the case is fully covered by powers to sanction expenditure or to appropriate or re-

¹⁰⁵ See Annexure 80

appropriate funds, conferred by any general or special orders made by the Ministry of Finance, no Department shall, without the previous concurrence of the Ministry of Finance, issue any orders which may, *inter alia*, involve any abandonment of revenue or otherwise have a financial bearing whether involving expenditure or not.

- ix) Rule-4(3) of Government of India (Transaction of Business) Rules requires consultation with Ministry of Law for preparation of important contracts to be entered into by the Government.
- x) Under Rule-7 Government of India (Transaction of Business) Rules, all the cases specified in the Second Schedule, to the said Rules which include cases involving financial implications on which the Minister of Finance desires a decision of the Cabinet and the 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.
- xi) In addition to the above requirements flowing from statutory provisions, business rules as also the policy framework governing the telecommunication sector, the provisions of Constitution of India, in particular Articles 14, 19(1)(g) and 21, mandate that any procedure adopted for issuance of licences should be fair, transparent, in public interest and that the selection criteria must be certain and free from any ambiguity. Generally, the public property owned by the State, should be sold by public auction or by inviting tenders in order to secure the highest price and also to ensure fairness in the activities of the State and public authorities. There may be situations necessitating departure from the rule in the public interest for the good of the people, but then such instances must be justified by compulsions and not by compromise. In other words, such

departure must be justified by compelling reasons and not by mere convenience.

3.2 Having noticed the extant policies and the directions of DoT/Government as above and comparing the same with the internal procedure adopted by DoT the following deviations are noticed:

- (i) Under 2nd Proviso to Section 11 of the TRAI Act, the DoT was required to seek recommendations of TRAI as to the need and timing for introduction of a service provider. As per NTP 1999 as well, entry of more operators in a service area and selection of additional operators, was required to be based on recommendations of TRAI. In a suo-motu recommendations dated 27.10.2003 relating to unified licence, TRAI had also recommended that if the Government ensured availability of additional spectrum, then in the existing licensing regime, additional players could be introduced through multi-stage bidding process which was also accepted by the Union Cabinet on 31.10.2003. However, in deviation from said requirements, the Secretary, DoT, on the contrary, on 17.11.2003, approved formulation of procedure for accepting the applications for grant of UASLs by adopting procedure similar to the procedure adopted for grant of BSL. Further, on 24.11.2003, the Minister approved the formulation of procedure for grant of UASLs on the basis of "First Come First Served" as against through Multi Stage bidding process. All this was clearly in deviation of extant policies.
- (ii) As per NTP 1999, entry fee and basis of selection for additional operators had to be decided on the basis of recommendations of TRAI. TRAI in its recommendations dated 27.10.2003, which was accepted by the Cabinet on 31.10.2003, had specifically stated that grant of UASL had to be through multi-staged bidding process, as followed in the case of 4th Cellular operators. This meant that the

entry fee had to be determined on the basis of bidding as done in case of 4th cellular operators. DoT contrary to the said recommendations formulated the procedure on 24.11.2003 to collect entry fee from new operators at the rate paid by 4th operators thus deviating from the policy framework of NTP 1999.

- (iii) As can be seen from the Cabinet Note approved on 31.10.2003, the recommendations of TRAI dated 27.10.2003 were accepted. If the said recommendations of TRAI to follow the multi-stage bidding process were not acceptable to the DoT or it desired to formulate a procedure to the contrary, it ought to have referred the recommendations back to TRAI. This was also not done. This matter was not even considered by Telecom Commission, though it involved significant deviation from the procedure followed hitherto.
- (iv) The letter of Chairman, TRAI dated 14.11.2003, received in response to a telephonic talk, addressed to the Secretary, DoT, was interpreted by DoT officials to justify formulation of procedure whereunder fresh UAS licencees were to be inducted by paying entry fee paid by 4th cellular operators in the year 2001, contrary to express recommendations of TRAI that new UASLs had to be granted through multi-stage bidding. This again was a deviation in following the proper procedure for the reason that the letter of the Chairman of TRAI could not have been interpreted to infer contrary to express recommendation of TRAI.
- (v) As can be seen from NTP 1999, in relation to CMSPs, the availability of adequate spectrum was essential not only for providing optimal band-width to existing operators but also for entry of new operators. It stipulated that the entry of additional operators in a service area shall be based on the recommendations of TRAI. After advent of UASL regime, the procedure formulated and

followed to grant UASLs by applying procedure as was applicable to BSLs and by application of FCFS principle, without the restriction on the number of UASLs is also a deviation from the extant policies.

- (vi) Even the procedure adopted in relation to the new licences in the UASL regime, as applicable to BSL and that they would be issued licences on the FCFS basis, was not made known to the public. No new guidelines were issued. This procedure formulated and followed for fresh UASLs was inconsistent with extant policy requirement of transparency and fairness in procedure.
- (vii) Before formulation of procedure for having no cap on number of licencees in a service area on the basis of the recommendations of TRAI dated 28.8.2007, without placing said recommendations before the full Telecom Commission for its consideration, frustrated the policy underlying the very constitution of Telecom Commission.
- (viii) Under Tenth Five Year Plan, though the policy relating to spectrum was required to be promotional in nature and revenue considerations were to play secondary role, opportunity cost had to reflect the relative scarcity of the resource. The opportunity cost could be recovered by way of entry fee (for grant of access licence or allotment of spectrum), which could be fixed on the basis of competitive bidding. Procedure having been formulated for grant of access licences whereunder allotment of spectrum is assured, without revising entry fee, was opposed to extant policy.
- (ix) Between the period 2004 and 2008, if the entry fee was not to be revised to reflect the opportunity cost and when competitive bidding for determining entry fee was not followed; since the matter had financial bearing, before finalization of procedure for grant of licence / allotment of spectrum, concurrence of Ministry of Finance ought to have been taken as per Rule 4 of Government of India

(Transaction of Business). This is yet one more deviation from extant policy.

- (x) Relating to important Government contracts Ministry of Law and Justice is required to be consulted. The DoT itself having sought opinion as to procedure to be followed for grant of UASLs, ignored the opinion of Ministry of Law and Justice in this regard, which required consideration of the matter by a Group of Ministers, turning it as out of context.
- (xi) Procedure formulated whereby the processing of applications for grant of UASLs was restricted to only such applications which were received upto 25.9.2007 when the last date for receiving an application was stipulated as 1.10.2007, is not traceable either to the power vested in terms of any procedure laid out or satisfies the requisites of law in particular the principles of objectivity, fairness and transparency.
- (xii) The FCFS procedure adopted and applied, that too without consistency, was clearly without any nexus with the objective of the selection of UAS licencees pursuant to NTP 1999. By applying FCFS, the best eligible applicant's offer could stand excluded. This was opposed to the principles of level playing field amongst prospective applicants. The criteria of FCFS as adopted by the DoT was neither contemplated nor was it consistent with the NTP 1999, recommendations of TRAI and the Cabinet decision. Added to this, the basis of reckoning to apply FCFS was not consistently followed. Prior to 07.01.2008, the date of receipt of applications in DoT was reckoned for the purposes of FCFS and after 07.01.2008 the date of compliance of LoI was reckoned for purposes of FCFS. This was also not in tune with extant policy.

- (xiii) Despite the mandate of NTP 1999, Tenth Plan and recommendations of TRAI, availability of spectrum though crucial for transparency in the process of allotment and also for ensuring recovery of true opportunity cost, was not ascertained by DoT before granting licences.
- (xiv) On 22.2.2001, DoT issued an order formulating procedure for allotment of additional spectrum over and above start up spectrum of 4.4MHz +4.4 MHz stating that allotment of additional spectrum shall be subject to availability and justification. This being without prescription of any criteria for additional allotment was opposed to the policy mandate requiring optimum utilization of spectrum. Further, the stipulations as to "justification" being subjective, was opposed to the principles of fairness and transparency.
- (xv) That order of DoT-VAS Cell dated 12.11.2001 formulating procedure for allotment of additional 1.8 MHz +1.8 MHz spectrum over and above start up spectrum of 4.4 MHz +4.4 MHz, in the beginning itself subject to, only payment of additional 1% revenue as licence fee, without there being any recommendations of TRAI and in the absence of consideration by Telecom Commission or WPC Wing, was opposed to the extant policies and directions.
- (xvi) The procedure formulated by DoT on 1.2.2002 as contained in Order No. L-14041/2006/200-NTG to assign additional spectrum upto 1.8 MHz + 1.8 MHz to CMTS operators after reaching prescribed subscribers' base, was without the consideration and approval of Telecom Commission and was thus opposed to extant directions.
- (xvii) Procedure formulated for allotment of additional spectrum beyond 8.00 MHz on the basis of report of Technical Committee on Efficient Use of Spectrum by Cellular Services (Lalwani Committee) as approved by the Minister on 18.8.2003 without there being any

consideration by Telecom Commission and in the absence of independent opinion of WPC, was contrary to the extant directions. Further, the procedure having so formulated for allotment of spectrum beyond 8.00 MHz, it was not notified or published for the benefit of all the existing operators or intending entrants and as such was also opposed to the extant policy requirements of transparency and fairness. Only because Cellular Operators Association of India (COAI) and Association of Basic Telephone Operators (ABTO) were in the said Committee the requirement of publishing/notifying the decision could not be dispensed with.

(xviii) A procedure was formulated by DoT to collect the same entry fee paid by 4th cellular operator for inducting new UASL operators from 2003 onwards. This had financial bearing and also involved pricing of start-up spectrum. This decision was not only contrary to recommendations of TRAI but was also taken without concurrence of Ministry of Finance as required under Government of India (Transaction of Business) Rules and also as per decision of Cabinet dated 31.10.2003.

Summation

3.3 From the above it is noted that the internal procedures adopted by DoT to the extent brought out have not been in tune with the extant policies and the directions of DoT/Government.

TERM OF REFERENCE – 4

To examine whether these procedures were followed consistently and if not, identify specific instances of

- a) Deviation from laid down procedures
- b) Inappropriate application of laid down procedures
- c) Violation of underlying principles of laid down procedures.

4.1 Under ToR-2 the procedures adopted by DoT during the period 2001-2009 for issue of telecom access service licences as also allocation of spectrum to all telecom access service licensees, have been examined. In that backdrop, going by the records made available, deviations from, inappropriate applications of, and violation of underlying principles of the laid down procedures, are noticed as under:

- (i) Notified guidelines for grant of BSLs dated 25.1.2001 did not have any provision for extending time for rectifying deficiencies in the applications. The guidelines stipulated that the application, if deficient, will be rejected. However, a decision was taken in file No. 10-1/2001-BA-II, 2/C¹⁰⁶ on 16.2.2001 to grant time to applicants for BSLs without issuing any formal order and notifying the same to all applicants. Such a decision in effect overrode the notified guidelines. It also did not give any clear indication as to in what all cases extension could be granted and did not specify maximum limit of time for granting extensions. This could result in selective /arbitrary exercise of discretion and was in deviation from the laid down procedure.

¹⁰⁶ See Annexure 16

- (ii) Notified guidelines for grant of BSLs dated 25.1.2001 stipulated that in case an applicant is found eligible for grant of BSL, the applicant shall be required to deposit Entry Fee and submit Bank Guarantees etc. and sign licence agreement within thirty days failing which the offer of grant of licence was to stand withdrawn at the expiry of permitted period. The guidelines had no provision for extension of time for compliance with LoI. However, extension of time spreading to several months, was granted to Tata Tele Services Ltd. for compliance with LoIs issued to it in respect of Maharashtra, Haryana, Kerala, Punjab and Rajasthan service areas. This was contrary to the laid down procedure. Stipulations as to compliance within prescribed time were rendered meaningless. Grant of such extension on case to case basis besides being against the notified guidelines could result in arbitrary and selective application and abuse of discretion.
- (iii) For granting UASLs though it was decided to adopt the procedure applicable for grant of BSLs, the procedure as per decision in File No. 10-1/2001-BA-II, 2/C dated 16.02.2001¹⁰⁷, as applied to BSLs for extension of time for rectifying deficiency in application with the prior approval of Member (Production) and Member (Finance) was not followed. Time was extended for rectifying discrepancies in application of Idea Cellular Ltd. dated 4.8.2005 for grant of UASL for Mumbai service area without the approval of Member (F).¹⁰⁸ While as per decision in File No. 10-1/2001-BA-II, 2/C dated 16.02.2001 time could be extended by say 30 days, time to rectify deficiencies was extended for over a year for Idea Cellular Ltd. and LoI was issued only on 20.11.2006. It having been decided to apply FCFS for grant of UASL extension of time for over a year that too without the concurrence of M(F) amounted to deviation from laid

¹⁰⁷ See Annexure 16

¹⁰⁸ See Annexure 81

down procedure. This besides making subsequent applicants wait also could result in wastage of spectrum that might be available for allotment.

- (iv) Guidelines for grant of UASLs dated 14.12.2003 also required the applications to be decided in 30 days. This decision was not adhered to. After seeking recommendations of TRAI on various issues including the issue of limiting the number of access service providers in each service area the Minister took a decision on 17.7.2007 in file No. F.20-61/2006-BS-II¹⁰⁹, not to further process the pending applications for grant of UASLs. By this decision even the applications that had been submitted for issuance of LoI were withheld. This resulted in accumulation of the applications. This could also result in non-utilization of scarce resource, spectrum. After receipt of recommendations of TRAI these applications were processed with other applications thus depriving earlier applicants of priority.
- (v) File for applications of Idea Cellular Ltd. for West Bengal, Karnataka, Tamil Nadu, Orrisa, Kolkata and Punjab service areas for grant of UASLs, was submitted for approval for issue of LoIs to the Minister on 29.3.2007¹¹⁰. However the file was returned with a remark that the Minister could not see the file¹¹¹. Subsequently, in the light of decision in F.No.20-61/2006-BS-II to undertake further processing of applications only after receipt of recommendations of TRAI as to putting a cap on number of licencees, the processing of the applications was further delayed. This delay not only defeated FCFS principle as followed by DoT but could also result in non-utilization of spectrum.

¹⁰⁹ See Annexure 32

¹¹⁰ See Annexure 82 (p. 8/N)

¹¹¹ See Annexure 82 (p. 8/N)

- (vi) Dishnet Wireless Ltd. had applied for grant of UASLs for eight areas including Madhya Pradesh service area for which application was made on 5.3.2004. After ascertaining the eligibility of the applicant LoIs for all the eight areas were issued on 6.4.2004. Licences were signed in respect of seven service areas excluding Madhya Pradesh. In the meantime on 21.4.2004 Dishnet Wireless Ltd. made applications for grant of UASLs for U.P. (East) and U.P. (West) service areas also. On 1.3.2005 further applications were made for Haryana, Kerala, Kolkata and Punjab service areas. Though for Madhya Pradesh LoI had already been issued, in terms of note dated 5.5.2004 for the first time it was observed that the aspects of funding and especially of debt equity ratio of 1:1 projected did not seem to be very explicit. This was not warranted in terms of notified procedure/guidelines. Subsequently, in terms of note put up by Director (LF-II) issue was also raised as regards the net worth of the applicant having gone up substantially. For getting the said points clarified, the signing of licence agreement for Madhya Pradesh service area and processing of applications for other service areas was delayed. After receipt of clarification from the applicant on 8.7.2004 proposal was put up for issue of LoI for U.P.(East) and U.P. (West) service areas and also for extending time for signing licence for Madhya Pradesh service area. The proposal was also endorsed upto the level of Secretary, DoT and was put up for approval by the Minister. On 24.8.2004 PS to the Minister put up a note that he had been directed to seek clarification as to financial/equity between the applicant and its sister concerns holding licence elsewhere particularly in Tamil Nadu and Chennai; status of newspapers reports regarding sale of applicant or its sister concerns; verification whether applicant/its sister concerns having licences were later sold to another licensee/entity and legal implications of allegation of company having violated certain licence conditions. The

clarifications sought besides being vague, were also irrelevant for consideration of application for grant of UASLs. Based on the same, however, a notice was issued to the applicant, who submitted the clarification. However, on 13.12.2004 a note was put up by AD BS-III seeking legal opinion in the matter, if before granting UASL licences, the decision of TDSAT on the issue of vigilance cases and penalties imposed by DoT could be awaited. Subsequently, the file was submitted to Legal Advisor but was withdrawn on 17.12.2004. On 30.3.2004, a note was put up by Secretary, DoT that as discussed with the Minister the files of the applicant were being returned with a direction that Director should ascertain all the show-cause notices/advisory letters issued to the applicant/or its group companies. Ascertaining of show-cause notices/ advisory letters was again not warranted in terms of the laid down procedure. In terms of note dated 27.6.2005, it was observed that LR Branch had intimated that there were certain show-cause notices issued to the applicant and there were certain cases reported involvement of subscribers of the applicant. After announcement of guidelines for grant of UASL licence on 14.12.2005, by letter dated 2.1.2006 applicant was required to furnish information as per the new guidelines which was submitted on 19.1.2006. While the information furnished was being examined, on 19.4.2006 the DDG (BS), again put up a note desiring to know the status of the show-cause notices, etc. to submit to the Minister. Based on this, on 21.4.2006 and 11.5.2006, ADG (BS-III) sought information from LR Section. From the file it is not forthcoming if the same was responded to. On 22.5.2006 applicant submitted revised equity structure, etc. After verification and submission of FIPB approval only on 1.11.2006 the grant of issuance of LoIs for six areas was approved and LoI for Madhya Pradesh was modified. The delay in filing licence for Madhya Pradesh and issue

of LoI for rest of the areas made other applicants wait. This could also result in wastage of spectrum.

- (vii) In case of grant of UASL to Idea Cellular Ltd. for Mumbai service Area, application for grant was received in DoT by AD-BS-II on 3.8.2005. As on date of said application Tata Industries Ltd. was holding 31.69% equity in applicant's company. DoT considered that the same rendered Idea Cellular Ltd. ineligible for grant of UASL as this was in breach of restriction that an applicant must not have substantial equity in any other operator in the same service area. While priority of Idea Cellular Ltd. for Mumbai area was retained from date of its application, subsequent transfer of equity by Tata Industries Ltd. was treated as compliance with eligibility requirement¹¹². This amounted to violation of laid down procedure which did not admit of a situation wherein an applicant could retain seniority though on the date of application was ineligible and acquired eligibility only later.
- (viii) In case of Essar Spacetel Pvt. Ltd. for grant of UASL, applications were made for Assam, Bihar, Himachal Pradesh, J & K, North East, Orissa and Madhya Pradesh service areas on 14.12.2004. On 12.1.2005 a letter was addressed by DoT pointing out deficiency as to requirement of submission of equity structure. The correspondence continued till 18.5.2006. It is noticed that information was sought/ discrepancies were pointed out in a piecemeal manner¹¹³. LoI was finally issued on 20.11.2006 for all service areas except Madhya Pradesh. For Madhya Pradesh LoI was issued on 5.3.2007. Licence agreement for all areas except Madhya Pradesh was signed only on 5.12.2007 and for Madhya Pradesh it

¹¹² See Annexure 81

¹¹³ See Annexure 84

was signed on 19.12.2007. This could cause wastage of spectrum, besides making later applicants wait.

- (ix) In case of Allianz Infratech Pvt. Ltd., applications were made for grant of UASL on 3.9.2007 for Twenty Two service areas except UP (West). Having regard to its paid up capital, applicant was found eligible for UASL either (1) category A/Metro, (2) category B or (3) category C, service areas, as per priority to be indicated by the applicant. As regards the net worth, said applicant had initially indicated that the net worth of its promoters being four individuals, was Rs.600 crores, which by subsequent fax communication dated 1.10.2007 was claimed to be in excess of Rs.2950 crores. It appears that the applicant though originally had indicated that its promoters were four individuals, subsequently, in place of two individual promoters a company stepped in. In terms of note dated 9.1.2008 put by DDG-LF it was noticed that the claim for net worth for either of the amounts was not supported by details. Further at the time of application the Memorandum Of Association (MOA) did not include telecom services in its object clause. Applicant, by its letter dated 12.12.2007, had informed that MOA was amended to include telecom related activities on 1.9.2007. As per records available with DoT Registrar of Companies had taken on record the said amendment to MOA only on 26.10.2007. From the note sheets it is not forthcoming that there was any proof of applicant having filed amendment to MOA with the ROC before submitting application. Despite the same, proposal for issuing of LoI was approved by Member (Finance), Secretary DoT and MoCIT on 9.1.2008¹¹⁴ apparently without any verification as to the eligibility of the applicant in terms of stipulated network.

¹¹⁴ See Annexure 85 (p. 13/N)

- (x) Swan Telecom Pvt. Ltd. an applicant for UASLs, had submitted a certificate of Company Secretary to establish prescribed networth and paid up capital requirements for claiming eligibility for grant of UASLs for thirteen service areas. The details of one of its promoters, viz., Tiger Traders Pvt. Ltd. as on the date of the application was not available for ascertaining the eligibility of applicant. There was doubt also as to compliance of substantial equity clause as it was not clear if the preferential shares had to be included for the purpose of reckoning substantial equity. This can be noticed from the note was put up by Accounts Officer (LF-II) on 9.1.2008¹¹⁵. On earlier occasion, a proposal was also made to approach Department of Corporate Affairs for ascertaining if applicant met the substantial equity stipulations¹¹⁶. However, on 9.1.2008, a decision was taken by Secretary DoT to issue LoI with an observation that the applicant fulfilled the requisite conditions, apparently without any further deliberation/verification. Said decision was also approved by the Minister.
- (xi) Terms of UAS licence entitled the licensees to obtain initial spectrum of 4.4 Mhz. + 4.4 Mhz., subject to availability. However despite availability of Spectrum for start-up allotment, as per the direction of the Minister it appears that earmarking was stalled in July 2007 in various service areas viz. Assam, Himachal Pradesh, Uttar Pradesh (east), Uttar Pradesh (west) Jammu and Kashmir, Punjab, Rajasthan, Andhra Pradesh, Kerala, West Bangal, Delhi, Maharashtra, Bihar¹¹⁷, Karnataka, Mumbai, Madhya Pradesh, Haryana and North East, merely because review of procedure for allotment of additional Spectrum was pending, in the absence of any impediment. The then Secretary DoT failed to clarify correct

¹¹⁵ See Annexure 86 (p. 21/N)

¹¹⁶ See Annexure 86 (p. 5/N)

¹¹⁷ See Annexure 87

position in this regard. This resulted in adversely affecting the principle underlying FCFS as adopted in making an applicant to wait till December 2007 i.e. passing of order by TDSAT (dated 12.12.2007 in Petition No.286/2007)¹¹⁸. It also resulted in non utilization of available spectrum for six months. Because of the delay the valuable spectrum was wasted. This was also unfair to the applicants who had acquired the access service licence by paying requisite entry fee and bank guarantees etc. but had to unduly wait for allotment of start-up allotment.

- (xii) As per the laid down procedures/guidelines¹¹⁹, in case of merger of licences in a service area, the post-merger licensee was entitled to total amount of spectrum held by merging entities subject to meeting the prevailing spectrum allocation criteria, within three months of approval of merger. In failing to do so, post-merger licensee was required to surrender the excess spectrum. Allotment of start-up/ additional spectrum could not be withheld merely because a proposal for merger was pending in a service area. On 22.8.2008, a note was put up that start-up spectrum for six applicants in Maharashtra service area were available. On 26.8.2008, Wireless Advisor proposed to withhold allotment of start-up spectrum to Spice Communications Limited on the ground of pendency of merger proposal with Idea Cellular Limited. Based on the said proposal, reserving start-up spectrum for Spice Communications Limited, a decision was taken to allot spectrum to other applicants including some who had lower priority. Similarly, in case of Punjab and Haryana service areas though spectrum was available as on 5.9.2008

¹¹⁸ Before TDSAT on 12.11.2007 in petition No.286/2007 an affidavit was filed by Government of India giving order of priority for grant of spectrum as (i) old demand for spectrum, (ii) start up spectrum for December 2006 licensees and (iii) spectrum for dual technology. TDSAT in terms of order dated 12.12.2007 permitted for withdrawal of said affidavit. Further, in petition No. 317/2007 final order was passed on 12.12.2007 wherein Solicitor General having submitted that start-up spectrum would be given to the petitioner in accordance with the policy, petition was disposed of.

¹¹⁹ Annexure 88

and 24.9.2008 respectively, allocation of spectrum was kept pending. Finally, spectrum was allotted on 6.5.2009. The anomalous position was allocation of spectrum was kept reserved for the operators involved in proposal for merger while allotting spectrum to subsequent applicants violating the FCFS basis. Because of this approach spectrum could not be used efficiently and optimally.

- (xiii) For MTNL and BSNL, additional radio spectrum was earmarked in certain telecom service areas for EMI/EMC analysis with existing usage, through field trial, initially for a limited period of three months. Subsequently, though MTNL and BSNL did not meet the stipulated eligibility criteria and though applications for allotment of additional spectrum from other operators, who had eligibility as well as priority were pending, the earmarking of additional spectrum to BSNL and MTNL on EMI/EMC analysis through field trial, was continued till finalization of revised criteria¹²⁰. TDSAT in petition No. 286 of 2007 has held that the allocation of additional spectrum to BSNL and MTNL was discriminatory against the private GSM operators. DoT was directed to review the subscriber base of BSNL and MTNL in all the service areas and withdraw such spectrum that was beyond the criteria laid down by DoT. Against the decision of TDSAT, BSNL and MTNL have approached Supreme Court of India wherein the order of TDSAT has been stayed and the matter is sub-judice. Hence no comments are made in this regard.
- (xiv) As per practice followed by WPC wing for allotment of Spectrum (start-up as well as additional) to UAS operators, the applicants have been accorded priority on the basis of date of submission of their applications in the Office of DoT. Recommendations of TRAI dated 28.8.2007 as accepted by DoT provided that a licensee for dual technology has to be treated like any other existing licensee in the

¹²⁰ See Annexure 89

queue for allotment of spectrum, once it becomes eligible for allotment of additional spectrum specific to the new technology. In the LoI for amendment of access licence to provide for dual technology¹²¹ as regards grant of spectrum, it has been stipulated that the priority for the purpose of FCFS basis shall be reckoned from the date of compliance in terms of LoI, viz., payment of additional licence fee, thus deviating from the laid down procedure.

- (xv) In case of telecom access licences granted during January-February, 2008 the licences had applied for grant of spectrum in February/March 2008. In several cases, despite availability of spectrum for earmarking at least for some of the operators, there was a delay in putting up the proposal for grant of spectrum for any of them. For instance, in case of Haryana Service area the proposal for allotment of spectrum to two out of six applicants whose requirement for initial allotment could be fully met, was put up on only on 11.9.2008¹²². Even thereafter instead of approving the proposal, on the basis of direction of the Secretary, DoT an exercise to find out possibility of allotment of partial spectrum for others was undertaken. Only after ascertaining the partial allotment that could be made, allotment to all applicants was done. In case of Mumbai service area also while the applications were made for grant of spectrum during January-February, 2008, the note was put up for allotment of spectrum only during August, 2008. In respect of applications made for spectrum during February/ March, 2008 despite availability of spectrum (initial) for some of the applicants on the basis of the priority, the decision to earmark spectrum was also delayed for West Bengal service area on 9.1.2009, for Assam service area on 22.12.2008¹²³, for J & K service area on 24.12.2008, for

¹²¹ See Annexure 90 (p. 19/N)

¹²² See Annexure 91 (p. 1/N)

¹²³ See Annexure 87

Gujarat service area on 25.12.2008/9.01.2009, for U.P. East service area on 10.9.2008/21.01.2009, for U.P. West service area on 25.09.2008/26.12.2008, for North East area on 23.12.2008 and for H.P service area on 04.12.2008.

- (xvi) In case of allotment of initial spectrum to various service operators, viz., Datacom Solutions Pvt. Ltd., Nahan Properties Pvt. Ltd., Essar Spacotel Ltd., Loop Telecom Pvt. Ltd. and Tata Tele Services Ltd. in Bihar service area, who were granted telecom access licence in the months of February/March, 2008, proposal for earmarking spectrum in order of priority based on applications for spectrum were put up on 9.9.2008¹²⁴. The note also included proposal for allotment of additional spectrum to Bharti Airtel Ltd. However, on 23.9.2008, the Wireless Advisor put up a note that all new licencees in the concerned telecom service area (Bihar) may be included district wise and then the file may be put up. Subsequently, a note was put up including in the list, the entitlement of Allianz Infratech Pvt. Ltd., which had applied for spectrum only in the month of August, 2008 and thereafter only, all the cases were processed together. Similarly, in case of M.P. service area in respect of applications for grant of spectrum made during January-February 2008, a note was put up in May, 2008 for grant of initial spectrum to four operators in order of their priority, viz., Datacom Solutions Pvt. Ltd., Volga Properties Pvt. Ltd., Loop Telecom Pvt. Ltd. and Tata Tele Services Ltd. However the Wireless Advisor on 19.8.2008 put up a note to the effect "*file withdrawn. Please put with latest receipts.*" Subsequently, the proposal was again put up by including the proposal for earmarking initial spectrum for Allianz Infratech Pvt.

¹²⁴ See Annexure 92

Ltd., which had applied for grant of spectrum subsequently i.e., on 7.8.2008¹²⁵. This frustrated the very purpose underlying FCFS basis.

(xvii) For Chennai service area two operators viz., Aircel Ltd. and Bharti Airtel Pvt. Ltd. had sought allotment of additional spectrum (in terms of criteria stipulated in order dated 29.3.2006). In order of dates of their respective applications for grant of spectrum, Aircel Ltd. had priority. Both the applicants met the criteria. However, spectrum available was only 1.4 + 1.4 MHz. By giving a go-bye to the FCFS criteria, out of the available spectrum of 1.4 + 1.4 MHz., three carriers each was distributed amongst two operators, i.e., 0.6 + 0.6 MHz. (paired each)¹²⁶.

(xviii) In case of Kolkata service area, Bharti Airtel Ltd. in terms of application dated 4.12.2006, had applied for additional spectrum of 2 + 2 MHz. beyond 8 + 8 Mhz. However, on account of some ambiguity in subscriber data, the allotment of additional spectrum was withheld for clarification. There was also subsequent application of Dishnet Wireless Pvt. Ltd. for grant of initial allotment of 4.4 + 4.4 MHz. It was found that against the request for allotment of 2 + 2 MHz. by Bharti Airtel Ltd. and 4.4 + 4.4 MHz. by Dishnet, spectrum was available only to an extent of 5 + 5 MHz. While in terms of FCFS procedure, the application of Bharti Airtel Ltd. for additional spectrum was required to be decided first, pending verification of the subscriber data of Bharti Airtel, a decision was taken to allot initial spectrum to subsequent applicant Dishnet Wireless Ltd. thus marching over the priority of Bharti Airtel¹²⁷. By allotting 4.4 + 4.4 MHz. to Dishnet Wireless Ltd. the request of Bharti Airtel Ltd. for allotment of 2 + 2 MHz. could not be met.

¹²⁵ See Annexure 92

¹²⁶ See Annexure 93

¹²⁷ See Annexure 94

- (xix) In case of several applications for grant of spectrum (initial/ additional) despite entitlement in terms of access licences, on account of non-availability/coordination with defence authorities and others for vacation of spectrum, the allotment of spectrum was delayed sometimes considerably by one year or more (for instance application of Essar Spacotel Pvt.Ltd. for grant of initial spectrum in Assam service area, which was made on 7.12.2006), allotment was made only on 11.1.2008. Further, in certain cases against entitlement of initial spectrum of 4.4 + 4.4 MHz., lesser extent of spectrum was awarded which is not sufficient for the operator to commence its operations. For instances, in case of Bharti Airtel Ltd. in Assam area against its request for initial spectrum of 4.4 + 4.4 MHz. originally only 1.8 + 1.8 MHz. was granted on 27.12.2004. Only on 15.3.2005 further allotment of 2.6 + 2.6 MHz. was made, thus making a total allotment as 4.4 + 4.4 MHz. Notably, Bharti Airtel Ltd. had applied for allotment of spectrum on 4.10.2004. Consequently, there was a delay of about five months in allotment of initial spectrum¹²⁸.
- (xx) In case of Bharti Airtel Ltd. an allotment of 2 + 2 MHz beyond 8 + 8 MHz. of spectrum has been made for Delhi service area on 17.7.2003 though no criteria for allotment beyond 8 + 8 MHz. existed. The allotment seems to have been made in anticipation of report of Lalwani Committee which was approved by MoC&IT on 18.08.2003. In absence of laid down procedure much less published/announced one, allotment of spectrum (additional) beyond 8 + 8 MHz. was improper.
- (xxi) In certain cases despite the process of coordination with defence authorities having been completed, there is a delay in further processing the application for grant of spectrum. For instance, in

¹²⁸ See Annexure 95

case of grant of additional spectrum beyond 8 + 8 MHz. to Idea Cellular Ltd. in Maharashtra service area. Though coordination with defence was completed on 10.12.2004, the allotment of spectrum was done only on 1.4.2005.

(xxii) In case of application of Dishnet DSL Ltd. for grant of Initial spectrum of 4.4. + 4.4 MHz for Bihar and certain other service areas was put up on 26.05.2004 indicating availability subject to co-ordination from defence authorities. On 09.06.2005 after co-ordination with defence authorities proposal for earmarking 4.4. + 4.4 MHz was put up for approval. However, on 14.06.2005 Member (T) desired to know if the case was approved by the Minister. Wireless Adviser put up a note on 16.06.2005 directing that the approval had to be decided at the level of Special Secretary. Thereafter though there is no criteria for allotment of initial spectrum to UAS operator except existence of access licence, the case again having been put up for approval Secretary, DoT on 26.07.2005 desired to know the stage of network planning and identification of sites for main switching centers. Subsequently, several notes were put up for verification of the said aspects and it was only on 04.02.2006 that allotment of Initial spectrum was approved. There was no justification for delay in approval of allotment of Initial spectrum despite availability¹²⁹.

(xxiii) In case of allotment of spectrum to CDMA operators also there has been in certain instances delay on account of non-availability of spectrum. For instance, in case of Tata Tele Services Ltd. for grant of initial spectrum in Haryana service area of 2.5 + 2.5 MHz. pursuant to its application 27.02.2004, initially only 1.25 + 1.25 MHz. was made on 30.6.2004¹³⁰. The remaining 1.25 + 1.25 MHz.

¹²⁹ See Annexure 96

¹³⁰ See Annexure 97

was allotted on 27.10.2004. In certain cases only partial spectrum was allotted on account of non-availability of spectrum. For instance, in case of allotment of CDMA spectrum for Kolkata service area to Tata Tele Services Ltd. on account of coordination with railways for vacating spectrum additional spectrum could be allotted only on 3.5.2006 against the application made on 9.12.2005.

(xxiv) In some cases the delay in putting up the proposal for allotment of spectrum, for instance, in case of allotment of initial CDMA spectrum to Tata Tele Services Ltd., pursuant to its application received in Central Registry on 27.2.2004, proposal was put up on 9.4.2004. However, the final approval was made only on 5.5.2004.

(xxv) In some other cases where the applications for grant of spectrum to CDMA operators was processed and approved at other levels, there was a delay on account of approval by the Minister. For instance, in case of allotment of spectrum to BSNL for Kerala service area the proposal for approval was put up on 10.07.2007 that was approved by the Minister only on 17.07.2007¹³¹.

Summation

4.2 From the above, it is noted that there appears to have been deviation, inappropriate application and violation of underlying principles of the laid down procedures.

¹³¹ See Annexure 98

TERM OF REFERENCE -5

To examine whether the procedures adopted were fair and transparent and were in keeping with the principles of natural justice and if not, identify the specific instances of lack of fairness and transparency.

2.41 In examining the procedures adopted for issuing telecom access licences and allotment of spectrum, the concept of fairness and transparency, keeping with the principles of natural justice, would import the following:

- i) They should be duly notified to public so that all the interested and intending applicants had knowledge.
- ii) They ought to be rational, objective, relevant and certain.
- iii) They ought to be notified sufficiently in advance giving reasonable time to all to participate with equal opportunity.
- iv) All applicants ought to be given equal opportunity and equal treatment while applying such procedures. In case of any relaxation in prescribed/adopted procedures is allowed for valid reasons, such relaxation should apply to all uniformly and should not result in any discrimination.
- v) They should be consistent with the policy, Government Orders and statutory provisions to ensure fairness and transparency.

2.42 Keeping the above in view and looking to the procedures adopted as already examined in ToR-2 for grant of access service licences and allocation of spectrum, following are the observations: -

- (i) In the year 2001, licences for CMTS (to 4th operators) were issued by adopting multistage bidding process after due publicity. The procedure adopted was fair and transparent.
- (ii) Grant of BSLs in the year 2001 upto the advent of USAL regime was in accordance with guidelines for grant of BSLs dated 25.1.2001¹³². Clause 23 of the said guidelines prescribed that BSL operators who required spectrum for offering WLL, would be granted the same on the “first come first served” (FCFS) basis. While said guidelines provided for FCFS basis, the exact point or event for reckoning priority amongst various applicants (for instance the date of application for grant of access licence, the date of grant for access licence, the date of compliance with LoI the date of application for allotment of spectrum or any other date) were not specified, thus leaving room for subjectivity and arbitrariness. In absence of certainty, FCFS criteria was opposed to principles of fairness and transparency. Though initially considering that all Basic Service Licencees did not require allotment of spectrum and spectrum was available for those who required the same (for WLL), the first come first served criteria for allotment of spectrum even without any indication as to exact point or event for reckoning priority many not have presented any difficulty.
- (iii) Subsequently, on 24.11.2003¹³³, a decision having been taken by DoT for applying FCFS basis as a criteria for grant of access licence, no guidelines were drawn up / procedure formulated specifying the point or event for reckoning the priority amongst applicants such as the date of application, or the date and time of LoI or the date of compliance with LoI. Considering scarcity of spectrum and large number of applications that were made for grant of UASL, adopting

¹³² See Annexure 13

¹³³ See Annexure 26

FCFS as the criteria for issuing licences for UASL without having fixed the point/event for determining priority made it wholly subjective and arbitrary as the decision was left to absolute discretion of the authority to change the point of reckoning. This was also opposed to the principle of fairness and transparency.

- (iv) At the time of decision taken in the year 2003 to consider the applications for grant of UASL on first come first serve basis, applications from two operators, namely, Bharati Airtel Ltd. and Tata Telecom Services Ltd., were already pending. As such FCFS as the basis for grant of UASL could have been unfair to other intending applicants who could not anticipate such decision and consequently, could not make applications to take advantage of FCFS. Besides the FCFS criteria in its application to grant of access licences lacks objectivity and is opposed to the principles of level playing field.
- (v) In the application form for BSLs in terms of guidelines dated 25.1.2001 while requirement of paid up equity capital and combined network of the promoters was stipulated the guidelines did not prescribe documents required to be submitted by an applicant to establish the same. Similarly, while guideline for grant of UASL dated 14.12.2005¹³⁴ also contain stipulations as to minimum combined network the documents required to establish the same is not specified. This had the potential to cause delay in processing on account of likelihood of query being raised at different stage for ascertaining the correctness of information furnished. This lack of stipulation makes the procedure open to abuse at the processing stage. Hence it was not fair.

¹³⁴ See Annexure 29

- (vi) In guideline dated 25.1.2001 for issue of BSL as also in the guideline announced on 5.1.2001 for issue of licences of CMTS to fourth operator, eligibility criteria included experience in telecom sector. However the nature and extent of experience was not specified thus taking away the objectivity in assessment. This ambiguity could lead to inconsistencies in dealing with applications.
- (vii) While in guideline for issue of BSL/application for UASL require submission of business plan along with its funding arrangements for financing the project, no specific requirement as to contents of business plan or extent /source / commitment of funding arrangement is stipulated. This also introduces an element of uncertainty and subjectivity as it is left to the discretion of officers to decide what would qualify as “business plan along with its funding arrangements for financing the project.”
- (viii) The guidelines dated 14.12.2005 while stipulates the restriction on substantial equity of applicant in another operator in same service area, the term equity, particularly whether the same includes preferential shares, has not been defined resulting in uncertainty/subjectivity.
- (ix) In terms of Note of Chairman, Telecom Commission dated 16.2.2001 in File No.10-1/2001-BS-II, 2/C¹³⁵, a decision was taken to extend time for rectifying deficiency in the application for grant of BSL within reasonable period say 30 days. However, the decision was neither incorporated in the guidelines dated 25.1.2001 nor published / informed to all intending applicants. Hence it was non transparent and not fair.
- (x) As per guideline for grant of BSL after issuance of LoI its terms were required to be complied within three months. There was no

¹³⁵ See Annexure 16

provision for extension of period of compliance or any laid down guidelines for such compliance. Such being the case, in the absence of guidelines extension of time for compliance with terms of LoI was granted to some of the applicants for different reasons and for varying periods, on several occasions. Similarly, in case of guidelines for UASLs no specific provision exists for extension of time for compliance with terms of LoI. However there are instances when time for compliance has been extended on case to case basis. Lack of uniformity in guidelines/principles governing extension of time for compliance with terms of LoI is opposed to principles of fairness and transparency.

- (xi) Press Note 5/2005 issued by Department of Industry, Policy and Promotion, Ministry of Commerce and Industries, while enhancing the FDI ceiling from 49% to 74%, had stipulated that infusion of FDI above 49% up to 74% shall require approval by FIPB and compliance with certain conditions. By virtue of press note 3/3007, the earlier guidelines were superseded. Subsequent to issuance of Press Note 3/2007 though DoT seems to have dispensed with the requirement of compliance with the conditions stipulated in Press Note 5/2005, the guidelines dated 14/12/2005 were not amended to reflect such decision, thus leaving scope for delay in processing on account of individual understanding and assessment of the concerned officers as to implication of Press Note 3/2007.
- (xii) After decision of the Minister for grant of UASLs to all applicants who had applied upto 25.9.2007 and to recur priority from the date of compliance with LoI, first Press Note dated 10.1.2008¹³⁶ was issued at about 1.47 P.M. notifying the same. It was further notified that DoT has been implementing FCFS basis for grant of UASLs under which initially an application, which is received first will be

¹³⁶ See Annexure 49

processed first and thereafter, if found, eligible applicant will be granted LoI and then whosoever complies with the conditions of LoI first will be granted UASL. The said Press Note though for the first notified the decision of DoT to accord priority to applicants, who complied with LoI first, wrongly mentioned that DoT has been implementing such a policy though in the past such practice was never adopted. Further, the first Press Note dated 10.1.2008 was published on the websites of DoT and PIB only. The first Press Note dated 10.1.2008 contained critical information as to drastic change in procedure followed by DoT hitherto as the priority already acquired by applicants by virtue of date of submission of applications was to change. The said press Note affected the rights of applicants *inter se*. The publication on the websites without publications in newspapers and without individual communications to all the applicants was opposed to the requirements of transparency and fairness.

- (xiii) On the same day, i.e., on 10.1.2008, second press release¹³⁷ was issued by DoT at about 2.45 P.M., i.e., in less than an hour's time requiring the representatives of applicants to collect LoIs on the same day between 3.30 p.m. and 4.30 p.m. The second press release dated 10.1.2008 requiring the applicants to collect LoIs simultaneously in effect took away the priority acquired by applicants who had applied earlier. This release was very significant as it was only after collecting the LoI that an applicant could comply and the applicant complying earlier was to get priority. This press release was again published on the websites of DoT and PIB. No record of individual communications to all applicants having been sent is available. Thus it was unfair as also non-transparent.

¹³⁷ See Annexure 50

- (xiv) The LoI for grant of UASL issued on 10.1.2008 stipulated fifteen days as the period within which the terms of LoI had to be complied with by an applicant. Having stipulated the period for compliance, there was no justification in granting priority to an applicant, who complied with LoI earlier to fifteen days and also earlier to other applicants comparatively, rendering it unfair.
- (xv) In case of some of the applicants it is noticed that while pursuant to second Press Note dated 10.1.2008, they have collected LoIs on the said date and had also submitted compliance on the same day, the demand draft for payment of entry fee was dated earlier to 10.1.2008. In case Unitech Infrastructure Pvt. Ltd., Volga Properties Pvt. Ltd., Azka Projects Ltd., Azare Properties Ltd, Unitech Builders & Estates Pvt. Ltd., Adonis Projects Pvt. Ltd., Hudson Properties Ltd. while the LoIs were issued on 10.1.2008 and compliance was submitted on the same day, the demand drafts for payment of entry fee was dated 24.12.2007. In case of Idea Cellular Ltd., while LoI was issued on 10.1.2008 and the compliance was submitted on the same day, the demand draft for payment of entry fee is dated 8.1.2008. For the first time the procedure for according priority to those applicants, who complied with the terms of LoI first, was mentioned in the letter of MoCIT to the Prime Minister dated 26.12.2007. The decision in the files of DoT to the said effect is taken only on 7.1.2008. The decision was made public through press release dated 10.1.2008. The submission of demand draft dated earlier to the notification of the decision indicates the possibility of some of the applicants having known the changed procedure to be notified in advance and in contemplation of such change in procedure had already kept ready the demand drafts for payment of entry fee. This also is opposed to the principles of fairness and transparency where some of the applicants have the benefit of

receiving in advance the information for change in the procedure and have benefited from such information to gain an edge over other applicants.

- (xvi) In the matter of grant of spectrum, in the absence of information as to its availability and no time frame having been fixed for allotment of spectrum, the procedure tends to be unfair, arbitrary and selective. There could be delay also on this count.

Summation

5.3 Having taken note of the requisites of fairness and transparency, the specific instances of the lack of the same in the procedure adopted by DoT in granting access licences and allotment of spectrum during the period 2001-2009, have detailed hereinabove.

TERM OF REFERENCE -6

To identify the deficiencies, if any, in the procedures as formulated and identify the public officials responsible for such deficiencies.

6.1 The deficiencies in the procedures formulated to the extent they were inconsistent with the governing policies and the directions of DoT/Government have been noticed while examining ToR-3. The procedures to the extent, the same are not fair and transparent have been examined under ToR-5. The identification of the public officers *prima facie* responsible for such deficiencies in formulation of procedures, has been done keeping in view the channel of submission, level of final disposal of matters in DoT, allocation of work and responsibilities, to them by specific order/s, without seeking explanation from the concerned officials. It is also made clear that officials have been identified without taking any view as to their criminal culpability or financial implication resulting from such deficiencies.

- i) Despite recommendation of TRAI dated 27.10.2003 that the new entrants in UASL regime could be permitted and introduced through a multistage bidding process which recommendation was also accepted by Union Cabinet on 31.10.2003, in deviation from the same, a procedure was formulated on 17.11.2003¹³⁸ to accept applications for UASLs in the form prescribed for BSLs. Before formulation of this procedure approval of Telecom Commission, though required, was also not taken. This apart, the decision so taken was not notified to the public for the benefit of all prospective applicants. Without there being any notified procedure to be followed for grant of UASLs and without applications having been invited from all, the procedure thus formulated was applied to

¹³⁸ See Annexure 99

facilitate consideration of applications made by Tata Tele Services Limited in the forms prescribed for grant of BSLs. This decision was taken by Mr. Vinod Vaish Chairman (TC) (Secretary, DoT), on the basis of note put up by Mr. V.K. Sharma AD (VAS-I) as endorsed by Mr. A.S. Verma Director (VAS-II), Mr. J.R. Gupta Sr. DDG (VAS), Mr. P.K. Mittal DDG (BS) and Mr. Ramachandran Member (P). Said officials appear to be responsible for deviation brought out in formulation of the procedure.

- ii) Though the recommendations of TRAI dated 27.10.2003 for unified licensing regime in para 7.39 contained express recommendation that introduction of additional players in UASL regime had to be through a multistage bidding process, Mr. Vinod Vaish, the then Secretary, DoT, appears to have sought opinion of the Chairman, TRAI on some aspect through a telephonic talk instead of making proper reference in writing as required under second proviso to section 11 (1) of TRAI Act as has been the practice. The Chairman, TRAI wrote a letter dated 14.11.2003, which was sought to be interpreted to infer conclusion as regards entry fee payable by fresh UASL contrary to and inconsistent with the express recommendations of TRAI¹³⁹. Based on such interpretation on 24.11.2003¹⁴⁰ a procedure was formulated to apply the entry fee paid by 4th Cellular operators (discovered in 2001) to new entrants under UASL regime in 2003 and also to consider applications for grant of UASL on FCFS basis. Formulation of procedure thus, was contrary to the decision of Union Cabinet dated 31.10.2003 which approved recommendations of TRAI dated 27.10.2003; before formulating such procedure recommendations from TRAI were not obtained; and the matter was not placed before the Telecom Commission. The decision to apply entry fee discovered in 2001 for the new entrants without revision

¹³⁹ See Annexure 25

¹⁴⁰ See Annexure 26

was also opposed to the policy requirement of the price of spectrum being commensurate with opportunity cost. The decision so taken was also not notified. The decision was taken on the basis of note put up by Mr. A.S. Verma Director (VAS-II), endorsed by Mr. J.R. Gupta Sr. DDG (VAS), Mr. P.K. Mittal DDG (BS), Mr. B.B. Singh DDG (LF), the then Director (LF), the then LA (T), Mr. P.P. Ramachandran Member (P), Mr. N. Parthasarathy Member (F), Mr. Vinod Vaish Chairman (TC) the then Secretary, DoT and approved by the then Minister. Said persons appear to be responsible for formulation of procedure inconsistent with the requirement.

- iii) On 27.10.2003 TRAI recommended that new entrants in UASL regime could be introduced through a multistage bidding process. TRAI appears to have reiterated its said recommendation dated 27.10.2003 in its recommendation dated 4.11.2003 as noticed from the note sheet¹⁴¹. Without placing these recommendations before the Telecom Commission DoT on 17.11.2003 and 24.11.2003 decided to follow the procedure applicable to BSL for granting UASLs and to also apply FCFS criteria and to collect entry fee from the new UAS licencees as was paid by fourth cellular operator in 2001 and based on such decision issued LoIs to Tata Tele Services Ltd. and Bharti Cellular Ltd. Having done so recommendations of TRAI dated 4.11.2003 were put up for formal acceptance by DoT, by Mr. V.K. Sharma, Asstt. Director (VAS-I) on 3.12.2003. This was endorsed by Mr. J.R. Gupta, Sr. DDG (VAS), Mr. Vinod Vaish, Secretary, DoT and approved by the Minister on 22.12.2003¹⁴². Having already taken a decision and implemented it, subsequent acceptance of recommendations of TRAI, frustrates the very purpose of requirement of seeking recommendations and the same is against the

¹⁴¹ See Annexure 27

principles underlying TRAI Act. The officers named above appear to be responsible for the deviation.

- iv) A need having been felt for legal opinion, on 26.10.2007 DoT through the Ministry of Law and Justice, sought the opinion of the Attorney General/Solicitor General on procedure to be followed for grant of new UAS licences. Opinion amongst others was sought if the existing procedure of FCFS for granting priority on the basis of the application could be continued. On 1.11.2007 the Minister of Law and Justice had opined that in view of importance of the case, it was necessary that whole issue is first considered by empowered Group of Ministers and in that process legal opinion of Attorney General could be obtained. However based on the note put up by Mr. Nitin Jain Director (AS-I) as endorsed by Mr. A.K. Srivastava DDG (AS) and Mr. K. Sridhara Member (T), on 2.11.2007 the Minister took the view that the opinion of Minister of Law and Justice was out of context and decided that procedure for grant of new UASs formulated earlier be continued, consequently the issue whether existing procedure was inconsistent with the extant policies/directions appears to have been ignored. On 2.11.2007, a further decision was taken to grant of LoIs to those applicants for UASs who had applied till 25.9.2007 which decision also did not satisfy the requisites of law in particular the principles of objectivity, fairness and transparency.¹⁴³ The officers referred herein above appear to be responsible for this.
- v) A procedure was formulated not to have a cap on number of UASs on the basis of recommendation of TRAI dated 28.8.2007 without placing the same before Telecom Commission (Full), by placing only before the full time members of Telecom Commission that too without furnishing the entire recommendations of TRAI and by

¹⁴³ See Annexure 47 (p. 7/N)

giving only one day's notice (as against the requirement of seven days' notice). Mr. D.S. Mathur Secretary, DoT, being the Chairman of the Telecom Commission, ought to have ensured compliance with the requirement of consideration by full Telecom Commission after giving requisite notice to all the members.

- vi) On 7.1.2008, in deviation from the decision of DoT dated 24.11.2008, a procedure was formulated as per which an applicant who complied with LoI conditions first has to be granted UASL licence first, without the matter having been placed before Telecom Commission. Said decision was based on the contents of letter of the Minister dated 26.12.2007 addressed to the Prime Minister. On the basis of note put up by Mr. A.K. Srivastava, DDG(AS) as endorsed by Mr. K. Sridhara, Member (T) and Mr. S. Behura, Secretary DoT, and approved by the Minister decision was taken to treat the contents of the said letter of the Minister as the policy of DoT. The officers referred herein above appear to be responsible for this deviation.
- vii) A procedure was formulated as per which applications received upto 25.9.2007 only were to be processed and also to grant priority on the basis of date of compliance with LoI. This procedure was notified through a Press Release dated 10.1.2008 which was issued at about 1.47 P.M. and published on the websites of DoT and PIB only, without individual written communications to all the applicants. On 10.1.2008 itself the Second Press Release was issued by DoT at about 2.45 P.M., i.e., in less than an hour's time requiring the representatives of all applicants to collect LoIs on the same day between 3.30 P.M. and 4.30 p.m., i.e., after 45 minutes of the Second Press Release. This Second Press Release was published on the website of DoT only again without there being individual written communications to all applicants. There is no record even to show

that applicants were informed about either of the Press Releases even on telephone. Absence of communication of critical change in procedure contemplated by the First Press Release considering the Second Press Release issued on the same date requiring applicants to collect LoIs between 3.30 p.m. and 4.30 p.m. was opposed to the requirements of transparency and fairness. Second Press Release requiring all applicants to simultaneously collect LoIs in effect took away the priority acquired by applicants who had submitted the applications earlier. These Press releases were issued under the signature of Mr. A. K. Srivastava, DDG (AS)¹⁴⁴. No records are available to show if any approval was obtained before issuing second Press Release. Mr. A. K. Srivastava, DDG (AS) appears to be responsible for these lapses.

- viii) The procedure formulated for collecting the entry fee paid by the fourth cellular operator for inducting new UASL operators from 2003 onwards, had financial bearing and also involved issues for pricing of start-up spectrum, which besides being contrary to recommendations of TRAI also required concurrence of Ministry of Finance under the Government of India (Transaction of Business) Rules as also as per the decision of Union Cabinet dated 31.10.2003. This requirement was also not complied. All the officers in line entrusted with the work of issue of new licence for access service appears to be responsible for having proceeded without complying with this requirement.
- ix) Procedure has been formulated for issuing access licences without first clearly ascertaining the availability of spectrum right from 2001 upto 2009 which was opposed to the policy mandate and the recommendations of TRAI. The officers in charge of the matters relating to the policy and issue of new licence for access service

¹⁴⁴ See Annexure 50

appear to be responsible for the decision to go ahead with grant of access service licences without availability of spectrum of having been ascertained, during the relevant period.

- x) As per NTP 1999 it was the responsibility of Wireless Advisor/WPC Wing to have reviewed spectrum utilization as also revised NFAP every two years. This was essential for ensuring transparent process of allocation of spectrum for use by a service and making it available to various users, a further requirement of NTP 1999. The review of availability of spectrum is also necessary for enabling growth of telecom sector, as envisaged under NTP 1999 and the Tenth Plan. However, despite significance of review of spectrum availability the same was not done. Mr. R.N. Aggarwal, Mr. P.K. Garg and Mr. R.P. Aggarwal who were the Wireless Advisors for the relevant period appear to be responsible for not reviewing spectrum utilization and NFAP.
- xi) Utmost care was required to be taken in fixing the price as well as the criteria for allotment of additional spectrum to achieve optimum utilization. The decision dated 12.11.2001 in U.O. No. 842-350/2000-VAS¹⁴⁵ formulating procedure for allotment of additional spectrum of 1.8 + 1.8 MHz. at the beginning itself subject to payment of additional 1% AGR was taken in deviation of requirement of obtaining recommendations from TRAI or placing the matter before Telecom Commission or seeking inputs from WPC Wing. It was by the approval of Minister of State and the Minister on the basis of note put up by Mr. A.K. Srivastava, Director (VAS-I) as endorsed by Mr. J.R. Gupta, Deputy Director General (VAS), the then Member (P) and Mr. Shyamal Ghosh Chairman, TC.

¹⁴⁵ See Annexure 54

- xii) The decision of DoT dated 1.2.2002 in Order No. L-14041/2006/200-NTG¹⁴⁶ formulating the procedure for allotment of additional spectrum beyond 6.2 + 6.2 MHz upto 10 + 10 MHz for 1% AGR only, on the basis of subscribers linked criteria, though had financial bearing, was taken without there being a recommendations of TRAI and without consideration by Telecom Commission. This procedure while prescribed 5 lakhs subscriber base as criteria for allotment of spectrum beyond 6.2 MHz did not provide for mechanism for ascertaining whether in fact a service provider had reached the required subscriber base. The additional allotment of spectrum used to be made on the basis of unilateral claim made by applicant without any verification. This procedure in deviation of policy/directions was on the basis of note put up by Mr. J.R. Gupta, DDG (VAS) as endorsed by Mr. Shyamal Ghosh, Chairman, TC and approved by the Minister.
- xiii) A procedure was formulated on 18.8.2003¹⁴⁷ for allotment of spectrum beyond 8 MHz + 8 MHz, by accepting the report of Committee on Efficient Use of Spectrum (Lalwani Committee), though recommendation of said committee on said aspect was beyond its terms of reference. This procedure was again formulated without placing the matter before Telecom Commission and/or without there being recommendations from TRAI. The procedure came to be formulated with the approval of the Minister on the basis of note put up by Mr. R.J.S. Kushwaha, JWA(T), endorsed by Mr. K.H. Khan Member (T) and Mr. Vinod Vaish Chairman, TC. After formulation of the procedure the concerned also failed to issue/notify any order on the basis of the decision.

¹⁴⁶ See Annexure 55

¹⁴⁷ See Annexure 58

- xiv) The WPC Wing of DoT being entrusted with the spectrum management, ought to have taken decisions/provided its inputs in the matter of formulation of procedures involving criteria for allotment of spectrum and its pricing. While in some of these decisions WPC Wing has not been involved, even WPC Wing on its part did not assert or play its role, particularly when spectrum management is the function of WPC Wing. Thus, there is a failure on the part of WPC Wing. Though WPC Wing was not involved in the decision making process, it chose to comply with such procedures formulated when access licensees approached it for allotment of spectrum. Mr. R.N. Aggarwal, Mr. P.K. Garg and Mr. R.P. Aggarwal, Wireless Advisors, are responsible for this deficiency.
- xv) The procedure formulated either as per the guideline for grant of BSL dated 25.1.2001 or the guideline for grant of UASL dated 14.12.2005 did not envisage any mechanism for DoT to independently cross verify the eligibility of applicants with reference to paid up equity, combined network, absences of substantial equity in more than one entity etc. For establishing eligibility as to paid-up equity and substantial equity only certificates of Company Secretary is required to be submitted. In absence of a mechanism to cross verify these eligibility aspects there is likelihood of ineligible applicants getting the access licences. Authority/officer/s responsible for framing the guidelines ought to have taken care of these aspects.
- xvi) In procedures formulated for grant of access licences while there have been stipulations as to experience in telecom sector, business plan, non-existence of substantial equity generally without proper definition/specification as regards requirement for the purpose. Absence of precise definition and mentioning the requirements in general terms leads to subjectivity and is definitely a deficiency.

Authority/officer/s responsible for framing the guidelines ought to have taken care of these aspects.

- xvii) There is no timeframe prescribed for disposal of an application for allotment of start-up or additional spectrum, thus leaving the process open-ended. There is no form prescribed for applying for allotment of additional spectrum. For ensuring uniformity and expeditious processing of an application and also to ensure accountability of the applicant in making declarations for claiming eligibility for grant of additional spectrum, it is essential that a form is prescribed for seeking allotment of additional spectrum. Authority/officer/s responsible for framing the guidelines ought to have taken care of these aspects.

Summation

6.2 As noticed above, the deficiencies in the procedures formulated have been brought out and the identity of the public officials who appear to be *prima facie* responsible, have been provided by name and others are identified with reference to their designations/responsibilities, for want of information in time.

TERM OF REFERENCE – 7

To identify the shortcomings and lapses, if any, in the implementation of the laid down procedures and identify the public officials responsible for such lapses.

7.1 The deviations from the laid down procedures have been noticed during examination of ToR-4. The identification of the public officers *prima facie* responsible for lapses in implementation of the laid down procedures, has been done keeping in view the channel of submission, level of final disposal of matters in DoT and allocation of work and responsibilities, to them by specific order/s without seeking explanation from the concerned officials. It is also made clear that officials have been identified without taking any view as to their criminal culpability or financial implication resulting from such deficiencies.

- (i) In the notified guidelines for grant of BSLs there was no provision for extending time for rectifying deficiencies in the applications. The guidelines stipulated that the application, if deficient, will be rejected. However, a decision was taken in file No. 10-1/2001-BA-II, 2/C on 16.2.2001¹⁴⁸ to grant time to applicants for BSLs to rectify the deficiencies was taken by Mr. Shyamal Ghosh, Secretary DoT. No formal order was notified in general or to all applicants. Such a decision in effect overrode the notified guidelines. It also did not give any clear indication as to in what all cases extension could be granted and did not specify maximum limit of time for granting extensions. For these reasons the procedure adopted for grant of extension of time was non-transparent, arbitrary and could result in subjective approach. Mr. Shyamal Ghosh, the then Secretary, DoT appear to be responsible for this shortcoming.

¹⁴⁸ See Annexure 100

- (ii) In the matter of BSLs, the notified guidelines did not have a provision for extension of time for compliance with terms of LoI. Despite the same, time was extended time and again for several months for Tata Tele Services Ltd. for grant of BSLs in Maharashtra, Haryana, Kerala, Punjab and Rajasthan service areas, for compliance with LoI. Extension of time in absence of any enabling provision in the guidelines could lead to arbitrary exercise of power and favouritism subjectively. This decision was taken on the basis of note put up by Mr. Jeet Singh, ADG (BS-II) and was endorsed by the then Director (BS-II), Mr. P.K. Mittal DDG (BS), Mr. R.N. Goyal Member (P), Mr. R. Ramanathan Member (F) and Mr. Shyamal Ghosh Chairman (TC) without raising any objection and finally got approved by the Minister. Hence, these public officials are identified who appear to be responsible for the lapse in the procedure.
- (iii) Applications for grant of UASL were required to be decided in 30 days so far as practicable as per the guidelines. In deviation from the notified guidelines, a decision was taken on 17.7.2007 in file No. F.20-61/2006-BS-III¹⁴⁹ to withhold further processing/examination of pending/future applications till receipt of recommendations of TRAI on restricting the number of licences in a service area. This resulted in accumulation of the applications which were at different stages of processing. In fact some of the applications which had been submitted for approval of LoIs were also withheld. This apart from defeating FCFS criteria as even adopted by DoT also could result in non-utilization and wastage of valuable spectrum for some period which otherwise, could have been granted to eligible applicants. The decision was taken on the basis of note put up by Mr. Madan Chaurasia on 26.4.2007, SO(AS-I), endorsed by Mr. R.K. Gupta, ADG(AS-I), and a further note put by Mr. Nitin Jain

¹⁴⁹ See Annexure 32

Director (AS-I) on 11.5.2007, endorsed by Mr. A.K. Srivastava, DDG(AS) Mr. K. Sridhara, Member (T) and Mr. D.S. Mathur, Secretary(T) and as approved by the Minister. For adopting this deviation, the matter should have gone to Telecom Commission first. The aforementioned public officials appear to be responsible for and are identified for this shortcoming.

- (iv) Idea Cellular Ltd. applied for grant of UASL for West Bengal and other service areas. For issuance of LoIs the proposal was submitted on 29.3.2007¹⁵⁰. However, the file was returned with the remarks "*could not be seen*" by the office of the Minister. The official concerned failed in his duty in drawing attention of the Minister. The further processing of the file was withheld on the ground that in F.No.20-61/2006-BS-III, a proposal had been submitted to the Minister to process the applications only after receipt of recommendations from TRAI. This also defeated FCFS principle affecting the entitlements of applicants and also could result in wastage of scarce resource like spectrum, if available. This decision was taken on the basis of note put up by Mr. Madan Chaurasia, SO(AS-I), endorsed by Mr. R.K. Gupta ADG(AS-I), Mr. Nitin Jain, Director (AS-I), Mr. A.K. Srivastava, DDG(AS), Mr. K. Sridhara Member (T). This appears to be a lapse on the part of public officials mentioned above.
- (v) As per laid down procedure eligibility criteria was laid down and LoI had to be granted only if an applicant was found eligible. LoI was issued to Dishnet Wireless Limited for grant of UASL for Madhya Pradesh service area on 6.4.2004¹⁵¹. Thereafter on 5.5.2004 issue as to debt equity ratio/funding arrangement of applicant, which was not even relevant for ascertaining eligibility was raised by Mr. H.P.

¹⁵⁰ See Annexure 82

¹⁵¹ See Annexure 101

Mishra DDG(LF), thus delaying the signing of licence agreement. Director LF-II on 20.05.2004 further sought scrutiny on the ground that net worth of the applicant had risen. On 26.8.2004 the Minister issued directions for seeking clarifications which do not appear to be contemplated in the notified procedures. On 30.3.2005 based on directions of Mr. Nripendra Mishra, Secretary, DoT, issuance of certain show-cause notices to applicant /its sister concerns for other service areas was raised to delay the processing of LoIs for other service areas for which also for other service areas had applied, and also to withhold signing of licence for Madhya Pradesh. On 19.4.2006 Mr. P.K. Mittal, DDG(BS) again sought information as to status of show-cause notices, for which letters were written to LR Branch on 21.4.2006 and 17.5.2006. Pertinently, Mr. P.K. Mittal, DDG(BS) had put up the proposal for delinking the issue of show-cause notices with processing of files. All this caused undue delay in processing the applications. The delay in issuing licence for Madhya Pradesh and issue of LoI for rest of the areas not only made other applicants wait but also could result in wastage of spectrum. The aforesaid officers appear to be responsible for these lapses.

- (vi) Idea Cellular Limited had made application on 4.8.2005 for grant of UASL for Mumbai service area. LoI was issued on 20.11.2006.¹⁵² In the intervening period, time was extended to enable the applicant to acquire eligibility. As per decision in file No. 10-1/2001-BA-II, 2/C¹⁵³ extension of time could be granted to rectify the deficiencies in application by thirty days with the approval of Member (P) and Member (F). The time extended beyond thirty days was contrary to decision in file No. 10-1/2001-BA-II, 2/C. Further extension was granted without approval by Member (F). The decision to grant time

¹⁵² See Annexure 81

¹⁵³ See Annexure 16

initially was taken by the then Advisor (P) on 4.1.2006. Subsequently, a proposal has been submitted that as time cannot be extended, applicant may be informed to apply after meeting eligibility criteria and the same was endorsed upto the level of Advisor (P), Mr. B. Sivaramakrishnan Member (P) put up a note "*please speak*". Thereafter, the proposal for not extending time seems to have been kept pending. In the meantime, applicant having acquired eligibility, its application was processed further and LoI was granted. Grant of extension was opposed to laid down procedure which required decision on applications within thirty days. Even the requirement of approval of Member (F) for grant of extension as applied to BSLs was ignored. Additionally, delay in processing the application while making other applicants to wait was opposed to policy favouring growth in telecom sector and optimum utilization of spectrum. Hence, the then Adviser (P) and Mr. B. Sivaramakrishnan, Member (P) who appear to be responsible are identified for this lapse.

- (vii) Further, while Idea Cellular Limited for Mumbai service area did not have the eligibility as on date of application, subsequent acquisition of eligibility was taken into account for granting LoI by retaining the priority of the applicant from the date of original application¹⁵⁴. Proposal to intimate the applicant to apply afresh after acquiring eligibility was submitted on 24.1.2006 and endorsed upto the level of Advisor (P). However, pursuant to note put up by Mr. B. Sivaramakrishnan Member (P) to speak, the proposal seems to have been given up and instead information furnished by the applicant showing subsequent acquisition of eligibility was taken on record. Note for grant of LoI was put up by Mr. S.A. Malik, AD-BS-III, endorsed by Mr. R.K. Gupta, ADG BS-III, further note put up by

¹⁵⁴ See Annexure 81

Mr. Govind Singhal, Director BS-III, endorsed by Mr. P.K. Mittal, DDG (BS) and the then Sr. DDG (LF), the then Special Secretary (T) and approved by the Minister. Having adopted policy of FCFS grant of extension for acquiring eligibility subsequent to the date of application while maintaining priority went against the principle of FCFS as even ineligible applicants could book priority merely by making an application. The officials mentioned are responsible for such lapse.

- (viii) Processing of applications of Essar Spacetel Pvt. Ltd. for grant of UASL for Bihar, Assam, Himachal Pradesh, J & K, North East, Orissa and Madhya Pradesh service areas, which were made on 14.12.2004¹⁵⁵, was delayed unreasonably. LoIs were issued only on 20.11.2006 for all areas except Madhya Pradesh for which it was issued on 5.3.2007. This delay also frustrated the policy of achieving telecom growth at faster pace and utilizing spectrum optimally. The officers responsible for scrutiny and approvals appear to be responsible for the delay.
- (ix) Decision was taken to issue LoI to Allianz Infratech Pvt. Limited though its claim for net worth was not supported by details and though there was no record to show that before submitting application for grant of UASL its objective clause in MOA included carrying on of telecom business/activities¹⁵⁶. On 24.12.2007 note was put up by AO(LF-II) indicating that the applicant had not established eligibility, which was approved by DDG(LF) on 27.12.2007 and endorsed by Member (F). Despite noting this aspect, on 9.1.2008 a note was put up by Mr. Sukhbir Singh, Director (AS-III) for issuing LoI which is endorsed by Mr. Shashi Mohan Director (AS-IV) and Mr. A.S. Verma Director (VAS-II), Mr. Nitin Jain,

¹⁵⁵ See Annexure 84

¹⁵⁶ See Annexure 85

Director (AS-I), Mr. A.K. Srivastava, DDG(AS), Mr. K. Sridhara Member (T). The file was sent to Member (F). At this stage, DDG(LF) put up a note again indicating that the applicant had not established eligibility. This was endorsed by Member (F). However, Mr. S. Behura, Secretary (DoT), ignoring the said note, sought approval of the proposal for issuing LoI. This was approved by the Minister. This decision apparently taken in a post-haste manner without ascertaining the eligibility of the applicant could have resulted in grant of licence to an ineligible applicant though it had been pointed out much earlier that applicant had not established eligibility. This kind of decision also could have resulted in frustrating the very process of scrutiny of applications for which officials named appear to be responsible.

- (x) Swan Telecom Pvt. Ltd. applied for UASLs and supported its claim of net worth and paid-up capital by certificate of Company Secretary. In the process of application it was noticed that details of Tiger Traders Pvt. Ltd., one of the promoters of the applicants, was unavailable for ascertaining the net worth claimed. Considering the preferential shares issued by applicant, it was noticed that it did not qualify the substantial equity clause. A doubt was raised if preferential shares issued, could be considered for reckoning substantial equity. To this effect a note was put up by DDG (LF), which was endorsed by Member (F) with an observation that the issue needed examination by AS Branch. Subsequently on 9.1.2008 a note was again put up to the same effect by AO(LF-II) which was endorsed by Director (LF-III), DDG (LF) and Member (F). However, without any further verification Mr. S. Behura, Secretary (T) with an observation that the applicant fulfilled the requisite conditions sought the approval of the proposal to issue LoI and the same was approved by the Minister. This decision too taken in hurry

without ascertaining the eligibility despite pointing out, could lead to an ineligible applicant being granted licence and frustrated the scrutiny process. And could lead to arbitrary exercise of power resulting in favouritism. The decision to ignore that applicant has not established eligibility was taken by Mr. S. Behura, Secretary (T) and he appears to be responsible for the lapse.

- (xi) UAS Licence terms entitled a licensee to obtain start-up spectrum subject to availability. Despite availability of spectrum in July, 2007 a direction was issued by the Minister which appear to have effect of withholding allotment of start-up spectrum. The allotment of start-up spectrum was resumed only in December, 2007. The withholding of process of allotment of start-up spectrum despite there being no impediment, by reference to impending review of criteria for allotment of additional spectrum was accepted by the then Mr. T.S. Mathur, Secretary (T) without seeking any clarification or clarifying to the Minister. This resulted in wastage of spectrum.
- (xii) A decision was taken to withhold allotment of start-up spectrum to Spice Communications Ltd./Idea Cellular Ltd. in deviation from the prescribed procedure, on the ground that proposal of their merger was pending. This decision was taken on the basis of note put up by Mr. Dinesh Jha, DWA (V) and approved by Mr. R.P. Agarwal, WA, originally for Maharashtra service area on 26.8.2008. Subsequently, similar decision was taken for Punjab and Haryana service areas on 5.9.2008 by Mr. S. Behura, Secretary (T) based on the note put up by Mr. A.K. Narula, AWA (T). There was no impediment for allotment of start-up spectrum when it was available. Mere pendency of merger proposal was no bar, as the same was not contemplated under the guidelines. This resulted in non-utilisation and wastage of spectrum. This was also unfair to the applicants. The officials who appear to be responsible have been named.

- (xiii) In terms of recommendations of TRAI in case of an applicant becoming entitled for grant of spectrum for alternate technology, such applicant had to stand in queue with other applicants for allotment of spectrum. However, a decision was taken to issue LoI for amendment of UASL to provide dual technology, incorporating priority for allotment of spectrum on the basis of date of compliance with LoI, i.e., the payment of additional fee. This is in deviation from the practice followed which accords priority on the basis of date of application and not on the date of compliance of LoI. This decision was taken by the Minister on 17.10.2007.¹⁵⁷
- (xiv) General ruling on channel of submission and levels of final disposal of different categories of cases conveyed by Department of A.R & P.G. vide OM No. 30012/1/2002-O&M requires that ordinarily, not more than two working days may be taken by an officer to dispose of a file. There was an undue delay in putting up proposal for grant of start-up spectrum to applicants, who applied during February/ March, 2008. This delay is attributable to the officials responsible for putting up the proposal/initiating the case after receipt of applications.
- (xv) In respect of UASLs granted during February, 2008 for Haryana service area, applications for grant of spectrum were made in February/ March, 2008. The proposal for allotment of spectrum was put up only on 11.9.2008¹⁵⁸. This proposal was for allotment of full spectrum to some of the applicants, who had the priority. However, instead of approving the proposal Mr. S. Behura, Secretary, DoT, directed that possibility of allotment of partial spectrum to others be assessed. Thereafter, the same having been ascertained allotment to all applicants was done together. The decision was followed in other

¹⁵⁷ See Annexure 90

¹⁵⁸ See Annexure 91

service areas and only after ascertaining the availability of partial start-up spectrum for subsequent applicants, common approvals were granted for all the applicants simultaneously. This defeated the principles underlying FCFS and also was opposed to the policy of optimum utilization of spectrum. Mr. S. Behura, Secretary, DoT appears to be responsible for this lapse.

- (xvi) For Bihar service area proposal for allotment of start-up spectrum to various operators, who were granted UASLs in February/March, 2008, in order of priority was put up on 9.9.2008. Instead of approving the allotment on 23.9.2008 Mr. R.P. Aggarwal, WA required inclusion of all new licencees¹⁵⁹. Similar direction for putting up all cases together was issued by Mr. R.P. Agarwal, WA in respect of Madhya Pradesh service area¹⁶⁰. Subsequently, in accordance with direction Allianz Infratech Pvt. Ltd., who had applied for spectrum only in August, 2008, was also included in the proposal for allotment and all the applications were processed together. This was arbitrary and resulted in favouritism to the applicant. This also frustrated FCFS principle and resulted in wastage of spectrum. The named officials appear to be responsible for this lapse.
- (xvii) In respect of Chennai service area a decision was taken to divide the available spectrum of 1.4 MHz + 1.4 MHz in breach of the FCFS criteria followed hitherto amongst two applicants, viz., Aircel Ltd. and Bharti Airtel Ltd. irrespective of their priority. This decision was taken with the approval of Mr. K. Sridhara Member (T) and Mr. D.S. Mathur, Secretary (T) on 15.11.2006 on the basis of the note put up by Mr. R.J.S. Kushvaha, JWA(N)¹⁶¹. This appears to have adversely affected the right of one entitled to get and gave advantage

¹⁵⁹ See Annexure 92

¹⁶⁰ See Annexure 92

¹⁶¹ See Annexure 93

to the other not entitled to get. The officials who appear to be responsible are identified above.

- (xviii) Bharti Airtel Ltd. had applied on 04.12.2006 for additional spectrum of 2 MHz + 2 MHz beyond 8 MHz + 8 MHz. A decision was taken to proceed with allotment of start-up spectrum of 4.4 MHz + 4.4 MHz. to subsequent applicant, viz., Dishnet Wireless Pvt. Ltd. pending verification of subscriber's data of Bharti Airtel Ltd., was taken by Mr. D.S. Mathur, Secretary (DoT) as approved by the Minister, based on the note put up by Mr. Dinesh Jha, AWA and endorsed by Mr. B Gunasekhar DWA(V), Mr. P.K. Garg WA and Mr. K. Sridhara Member (T)¹⁶². This was in breach of FCFS criteria. Officers named above appear to be responsible for this lapse.
- (xix) Additional spectrum of 2 MHz + 2 MHz beyond 8 MHz + 8 MHz was allotted on 15.7.2003 to Bharti Airtel Limited for Delhi service area though no criteria for allotment of the same was in existence, in anticipation of report of Lalwani Committee. This decision was taken on the basis of note put up by the then concerned Engineer and endorsed by AWA, DWA and approved by WA. This was arbitrary and selective besides being unfair to other intending applicants in as much as had they known, they would have also applied. The officials responsible are as per the channel of submission and final disposal in the file. The officers named above appear to be responsible for this lapse.
- (xx) Allotment of start-up spectrum of 4.4 MHz + 4.4 MHz for Bihar service area to Dishnet DSL Ltd. despite availability having been ascertained and note for allotment having been put on 4.7.2005 was delayed on account of notes put up/queries raised which were not relevant in terms of laid down procedure for consideration of

¹⁶² See Annexure 94 *

application and allotment could be made only in February 2006. Such queries were raised by Mr. Brijesh Kumar Secretary (T) (Secretary DoT)¹⁶³ and as such he appears to be responsible for such lapse.

Summation

As noticed above, the shortcomings and lapses in the implementation of the laid down procedure have been brought out and the identity of the public officials who appear to be *prima facie* responsible, have been provided by name and others are identified with reference to their designations/responsibilities, for want of information in time.

¹⁶³ See Annexure 96

Term of Reference – 8

To suggest remedial measures to avoid in future

- a) **Deficiencies in formulation of procedures and**
- b) **Lapses in implementation of laid-down procedures.**

8.1 The internal (Intra-Departmental) procedures adopted/followed by the DoT during the period 2001-2009 in the matter of issuance of Telecom Access Service Licences and allotment of spectrum to all Telecom Access Service Licences are examined under ToR-2. Whether those procedures were in accordance with the extant policies, whether they were followed consistently or not, whether they were fair and transparent, whether there were any deficiencies in the procedures formulated and whether there were any shortcomings and/or lapses in the implementation of the laid down procedures, are examined in detail under ToR – 3 to 7. In the light of the same, following remedial measures are suggested:

Re: Formulation of procedures

- i) Wherever a contract is to be awarded or a licence is to be granted, there must be objectivity in the procedure/s for selection. It must be in tune with the requirements of law/the statutory norms and prevailing policy decisions of the Government. Such procedure/s must also be reasonable, fair, transparent and certain. The selection of applicants must be by choice and not by chance. First Come First Served (FCFS) basis is not justified when there are several applicants, there is competition and the resource is scarce. Merely on the basis that an applicant approached earlier by itself cannot be the basis for selection. Selection of an applicant for grant of licences on FCFS basis results in keeping away the best and allowing the one who approaches first though may not be the best. If that be so,

ultimately, the public interest suffers. Application of FCFS also results in delay in processing of subsequent applications in case the grant of licence to the prior applicant is delayed on any count. Thus, FCFS criteria blocks the processing of further applications and this is opposed to the policy of fast paced growth in telecom sector and optimum utilization of spectrum. It is therefore recommended that a procedure for selection based on merits is devised. At any rate, in a given situation if at all application of FCFS is justified, there must be a clear reckoning point or event to determine the priority and stringent norms for ensuring quick processing so that later applicants do not have to wait.

- ii) Perusal of various files for grant of licences/ allotment of spectrum reveals that on account of lack of specifications/timeframe/certainty in criteria, the processing of the applications has been delayed. Therefore it is recommended that the procedures formulated whether as to the stages/time frame for processing or norms of eligibility, should be clear, certain and as far as practicable must not leave any room for subjectivity or arbitrariness. This will eliminate consequent delay/ likely abuse at the time of processing. The procedure must specify time frame for— (i) receiving applications; (ii) scrutinizing the applications; (iii) intimating the applicants found eligible/ineligible/ or requiring them to rectify deficiencies/ensure compliance and (iv) processing the applications and intimating the decision to the applicants accordingly. Circumstances whereunder time for complying any requirements/ meeting with deficiencies etc., can be extended and the maximum extent of time that can be extended, must also be specified in the procedure.
- iii) The procedure formulated must also stipulate that decision either of accepting or rejecting the applications as also of requirements at all

stage of processing must be communicated to the applicants formally and in writing.

- iv) Procedures formulated based on policy guidelines/directions of Government should be approved and authenticated by Telecom Commission before implementation. Once such approval is made or given for such procedure drawn, any deviation to be done from that procedure must have prior approval the Telecom Commission before implementation.
- v) In case of change in procedures the same must be notified to all concerned well in advance before implementation.
- vi) The procedures formulated must not only spell out criteria, but also specify the documents required to be submitted by an applicant to satisfy the eligibility. Such procedures, if adopted, will not only cut the delay and also avoid unnecessary correspondence. This will enable expeditious disposal of the applications as well. Further it will make cross-verification easy.
- vii) A comprehensive check list should be drawn up based on the procedures and that must be included in the prescribed application form itself mentioning all steps/verification involved, to eliminate piecemeal approach. This will enable expeditious disposal and avoid dependence of applicants on officials to get information.
- viii) The matters, which require consideration by the Telecom Commission must be placed before it after complying the requirements as to meeting notice in letter and spirit. The practice of placing several important matters before "Internal Telecom Commission" which comprises full time members only should be discontinued. It must be ensured that all matters, which are required to be placed before the Telecom Commission, are so placed before

the Telecom Commission comprising Chairman, Full Time Members and Part Time Members only.

- ix) After receipt of recommendations of TRAI by DoT, there is nothing to indicate as to manner and time frame within which the same are to be considered by all concerned and are to be placed before the Telecom Commission. There is a need for drawing up a procedure for making it mandatory for placing the recommendations of TRAI before the Telecom Commission and that too within a specified time frame. In the event the recommendations are not accepted or modification is required, the DoT should refer the recommendation back to the TRAI.

Re: implementation of laid-down procedures

- x) In the DoT, based on guidelines/Government orders/policies and relevant statutory provisions, no detailed office memorandum indicating the procedures to be followed relating to grant of Access Service Licences and allotment of spectrum, has been drawn. Drawing up of a memorandum comprehensively detailing the procedures is necessary for the guidance of the officers so that it can be applied uniformly, scrupulously and strictly. It is also necessary for providing the information to the general public/prospective applicants to enable them to know the procedural /eligibility requirements, to ensure compliance with the requirements of fairness and transparency. Absence of a single document containing the details of procedures to be followed leads to inconsistencies and ambiguities depending upon the understanding, knowledge and information of the individual officer/s applying the procedures. The officers in line from the level of initiation to final disposal of the matters, with the change of incumbents, may have their own views or

perceptions of requirements as to procedure. Further, for individual officer/s, it may be practically difficult to gather procedures accurately and fully from different sources such as policies, guidelines, Government Orders and statutes. Thus it is recommended that on priority, the procedures to be followed by various cells/branches and officers in DoT in dealing with grant of licences and allotment of spectrum must be detailed in a single self contained document in the form of an office memorandum. This memorandum before implementation must be approved by Telecom Commission, the highest decision making authority in DoT.

- xi) Once approval of the procedure is granted by the Telecom Commission, Telecom Commission or any other designated officer should devise a mechanism for supervision to ensure implementation of the approved procedure, before the actual licence or spectrum is allocated.
- xii) The procedures besides being available in a self-contained single document and being fair, reasonable and certain must also comply with the requirement of transparency. They must be notified for the information of the public/intending applicants well in advance, not a few days or few hours earlier.
- xiii) Whenever DoT decides to induct new operators in any service area as and when the need and timing is appropriately decided, applications must be invited fixing the last date for receipt of such applications by giving due advance publicity in order to provide reasonable opportunity to all prospective applicants.

Re: Spectrum

- xiv) There is a greater need for transparency about spectrum allocation and assignment. As a first step, the DoT should put in public

domain, spectrum allocations made to various agencies with details of quantum, geographical locations, technology employed etc. This information should be widely advertised on website and should be regularly updated.

- xv) All spectrum allocations should be audited to determine efficient and proper utilization of the allotted spectrum. Audit reports should be widely publicized and made available on the website.
- xvi) The Government should take comprehensive spectrum reforms that would make public as well as private agencies holding the spectrum accountable for an efficient utilization. There is need to provide incentive to vacate unutilized spectrum and a penalty for hoarding. Inefficient utilization of spectrum should be discouraged and releasing of spectrum from such agencies should be sought by appropriate mechanism because inefficient spectrum utilization has great impact on opportunity cost of the spectrum.
- xvii) Availability of spectrum must be ascertained before inviting the applications for grant of access service licences which require usage of spectrum. If that is done, the applicant who obtains access service licence, need not wait for allotment of spectrum. Added to this, when the availability of spectrum is certain, the fair opportunity cost can be availed which consequently could eliminate artificial scarcity of spectrum.
- xviii) Considering that all UAS licencees do not need spectrum, process of allotment of spectrum needs to be delinked from the access licences and the entry fee/spectrum pricing needs to be structured accordingly, i.e., the entry fee payable for grant of access licence should not have any component of spectrum charges. Auctioning of spectrum by formulating suitable design appears to be appropriate.

- xix) Having regard to the fast and far reaching developments in the telecom sector, contemporary need, management related issues, vision for the future development, sustenance of public good as regards economic social and cultural aspects and the facts that existing legislations being very old are not able to meet all situations obtaining or arising, there is a need for comprehensive new legislation as in some other countries like Australia and New Zealand called "Radio Communications Act", with objectives amongst others directly relating to the spectrum such as:
- a) spectrum management including setting up of an independent high level spectrum authority.
 - b) Promoting competition;
 - c) maximizing the release of spectrum to society;
 - d) meeting government's economic and social policy decisions;
 - e) formulation of appropriate procedures concerning important aspects of spectrum.
- xx) The compendium on "channel of submission and level of final disposal of cases in DoT"¹⁶⁴ mentions the officers responsible for submission and the final authority responsible for disposal of all matters. General ruling on channel of submission and levels of final disposal of different categories of cases conveyed by Department of A.R. & P.G. vide OM No. 30012/1/2002-O&M dated 11.12.2002, stipulates that as a general rule levels of final disposal may be restricted to three, however, there may be exceptions in case of policy matters, parliament questions for which each Ministry/Department is to formulate clear guidelines indicating channels and levels of decision making. However, in the matter of

¹⁶⁴ See Annexure 10

grant of access licences (at the stage of issuance of LoI and also for grant of licence upon compliance with terms of LoI) and also for allotment of spectrum¹⁶⁵ the files go up to the level of Minister for final decision. Once the procedures for grant of licences / allotment of spectrum are laid down, in absence of requirement of any further policy decision, requirement of placing all the files for grant of licences / allotment of spectrum before the Minister is not necessary and the channel of initiation and final disposal can be restricted to three officers.

- xxi) It is recommended that suitable orders are issued for ensuring protection of upright officials who take a stand against any deviation either in formulation of procedures or its implementation. There is a need to protect such officials from any harassment / victimization. Mechanism should be devised to require consideration of confidential reports /case for promotion or order for transfer of such officers by any independent body before giving effect.

8.2 The above suggestions have been made in the limited time and resources made available for submission of this report. The same not being exhaustive, a larger debate would be beneficial.

¹⁶⁵ On 31.1.2005 as per directions of the Minister, Secretary DoT in File No.5/CH(TC)/5/N-12 appears to have ordered that the files pertaining to frequency assignment for telecom service providers while granting licence and frequencies for territorial broadcasting and up-linking of satellite TV channels have to be submitted to the Minister via Member(T)/Secretary(T) for approval.