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Performance Audit Report  
on the  
**Issue of Licences and Allocation of 2G Spectrum**  
by the Department of Telecommunications  
Ministry of Communications and Information Technology



**Report of the  
Comptroller and Auditor General of India**

Union Government (Civil)  
No. 19 of 2010-11  
(Performance Audit)

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Laid on the table of Lok Sabha/  
Rajya Sabha on 26 NOV 2010

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## Preface

This Report for the year ended March 2010 has been prepared for submission to the President under Article 151 of the Constitution.

The Report contains the results of examination by Audit of the Issue of Licences and Allocation of 2G Spectrum of Department of Telecommunications, Ministry of Communication and Information Technology. The audit covers the period from 2003-04 to 2009-10.



# Executive Summary

## I. Changes in the Telecommunications sector in India

In the last two decades the telecom sector witnessed rapid transformation with the National Telecom Policy-94 setting the stage for opening up of the sector. With changes in the sector, cellular mobile services outgrew the fixed line services. The most important change was the shift to a revenue sharing regime in National Telecom Policy (NTP) 1999 where the operators shared their revenue with the Government in the form of annual licence fee and spectrum charges. The Unified Access Services Licence (UASL) 2003 sought to frame the road map for a uniform licencing regime.

## II. Why did we decide to do an audit on the Issue of Licence and allocation of Spectrum now?

This sector has witnessed dynamic and rapid transition. It had been subject to audit and a report titled "Package of Concessions Given to Cellular Mobile Operators" was presented to Parliament in May 2000. A further review of the "Revenue Management in the Department of Telecommunications" was also undertaken by this office in 2004-05. This review mainly focused on the system of collection and accounting of licence fee and spectrum charges from the licensees. The Report based on this review was presented to Parliament in May 2006.

In January 2008, Department of Telecommunications issued 120 new licences for unified access services on the same day. These licences were issued at price which had been discovered in 2001. Issuance of 120 licences in just one day and at a price discovered in 2001 has drawn the attention of Media, Parliament and informed members of the civil society. Questions have been raised regarding the transparency in the allocation process and the failure in maximization of revenue generation from the allocation of spectrum, which is a national asset. This department had been receiving innumerable references from Members of Parliament and other sources repeatedly, questioning the allocation process and the price fixed for such allocation. The claim in each such reference is that ineligible applicants seem to have been granted licences and at a price which appeared far below what has been perceived to be the appropriate market price in 2008. It was in this context that this department felt that there was a sufficient justification to review the entire process of issuance of licences, award of spectrum and the implementation of the UAS regime. The need for doing so was further justified as six years have passed since the introduction of the UAS regime in 2003. While accepting the Government's prerogative to formulate the policy of UASL, it was felt that an in-depth examination of implementation of such policy needed to be done.



### III. How this Report is Organised?

Chapter 1 and 2 of this Report give the Policy Overview, System of issue of licences & allotment of spectrum and the Audit Approach. In Chapter 3, we have narrated the Audit findings relating to the implementation of UAS policy and Chapter 4 details the findings on the procedural lapses. Chapter 5 attempts to highlight the various indicators available to assess the presumptive value of spectrum. To attempt at deriving a maximum realizable economic value for allocation of 2G spectrum licences in 2008, recourse would have to be taken to a menu of different economic models. Each such model would be based on certain assumptions which may not necessarily be obtained when Government decides on a price for a scarce national asset as there would be no foolproof market discovery mechanism at any point of time. Each set of assumptions underlying the economic models could be open to questions and be disputed. For this reason we have only attempted to arrive at a presumptive value in this Report.

### IV. Major Findings

#### (i) Gaps in policy implementation

In August 2003 TRAI had submitted a Report recommending a road map for allocation of licences. This Report formed the basis for the UAS policy approved by the Council of Ministers in October 2003. The implementation of UASL regime was to be carried out in two phases with first phase of six months assigned for migration of already existing Basic Service Operators (BSOs) and Cellular Mobile Service Operators (CMSOs) to the new regime. The entry fee for migration of BSOs was determined as the fee equal to what was paid by the fourth cellular operator introduced through multi-stage bidding process in 2001. CMSOs were not required to pay any entry fee for migrating as they had already entered the market through a bidding process and thus paid a market determined price. The second phase was to start after the first phase in which a Unified Licencing regime, with a nominal entry fee for the licence with the spectrum being charged separately, was envisaged.

However, Audit examination reveals that the Department of Telecom did not implement the licensing regime as approved by the Cabinet and implemented only the first phase of the policy, overlooking the second phase. In the actual implementation, the interim stage of implementation seems to have become the final destination. This appears to have become the underlying factor, quite erroneously, to value the spectrum in 2008 at 2001 prices. An important objective of this policy decision to delink the prices of spectrum from the issue of licence and devise an efficient allocation formula for spectrum along with an appropriate price, remained unachieved. Ministry of Finance was authorized by the Cabinet decision of 2003 to participate in the discussion for efficient allocation of spectrum and price fixation but DOT decided not to associate the Ministry of Finance.

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

**(Paras 3.1, 3.2, 3.3)**

## **(ii) Telecom Commission was not consulted**

From a scrutiny of the records and information made available it appears that the High Powered Telecom Commission which also includes part time members from the Ministry of Finance, Industry, IT and Planning Commission was not apprised of the TRAI recommendations of August 2007 and hence, was not afforded an opportunity to deliberate on the merits of the TRAI recommendations. It is also seen that the High Powered Telecom Commission was not even consulted at the time of grant of 122 UAS licences in 2008.

**(Paras 4.2, 4.5)**

## **(iii) Views and concerns of Ministry of Finance overruled**

It was noted in Audit that DoT managed to keep the issue of spectrum pricing outside the purview of the GoM. The GoM's role in December 2006 was confined to issues concerning spectrum vacation. The ToRs left out the other two issues of efficient allocation and pricing, while all three were pronounced in the policy decision of 2003. Thus by getting the spectrum pricing issue deleted from the ToR, the DoT completely side-tracked the pricing issues.

**(Para 3.2)**

It has also been revealed in the course of audit that the Ministry of Finance, in November 2007, had questioned the sanctity of continuing with the price determined way back in 2001 without any indexation or current valuation. The Ministry had sought a review of the matter. This advice of the Ministry of Finance was overlooked by the DoT ostensibly on the basis of a four-year old Cabinet decision (October 2003) on the premise that it was authorized to calculate the entry fee for licences as per the recommendations of TRAI in 2003. DoT maintained that 'spectrum pricing was within the normal work carried out by them.'

**(Para 4.5)**

#### **(iv) Advice of Ministry of Law and Justice were ignored**

In October 2007 at its own initiative, the DoT requested the Ministry of Law and Justice to obtain and communicate the opinion of the Attorney General/Solicitor General of India to enable the DoT to handle an unprecedented rush of applications in a fair and equitable manner which would be legally tenable. The Ministry of Law, at the level of the Hon'ble Minister, opined that in view of the importance of the case and the various options which seem to have emerged, it was necessary that the whole issue be first considered by an Empowered Group of Ministers (EGoM) and in that process legal opinion of the Attorney General can be obtained. Surprisingly, this opinion, which the DoT had sought on its own volition, was felt to be 'out of context' at the level of the Hon'ble MoC&IT and hence the benefit of a discussion in the EGoM was also forgone. Thus, such important decisions seem to have been taken in DoT without the issues being deliberated and discussed at an inter ministerial forum.

**(Para 4.3)**

#### **(v) Hon'ble Prime Minister's suggestions were not followed**

In November 2007, the Hon'ble Prime Minister wrote to Hon'ble MoC&IT and expressed concern that in the backdrop of the inadequate spectrum and the unprecedented number of applications received for fresh licenses, spectrum pricing through a fair and transparent method of auction for revision of entry fee, which is currently benchmarked on an old figure, needs to be reconsidered. This advice of the Hon'ble Prime Minister evoked an immediate response from the Hon'ble MoC&IT who on the same day replied that the issue of auction of spectrum was considered by the TRAI and the Telecom Commission and it was not recommended by them as the existing licence holders had already got spectrum upto 10 mega hertz per circle without any spectrum charge. Hon'ble MoC&IT further informed that his Ministry has come to the conclusion that it will be unfair, discriminatory, arbitrary and capricious to auction spectrum to new applicants as it will not give them a level playing field. He had thus, justified the allotment of spectrum to a few new operators in 2008 without reconsidering the old entry fee discovered in 2001 ignoring the advice of the Hon'ble Prime Minister.

**(Para 4.4)**

#### **(vi) Arbitrary changes by DoT in the cut-off date.**

The TRAI report of August 2007 had recommended 'no cap' on the number of licences in any service area. Despite this recommendation of TRAI, the DoT issued a Press Release on 24th September 2007 stating that applications for issue of licences would be accepted only upto 1.10.2007. This action, in effect, conveyed fixation of an artificial cap in the number of licenses to be awarded. However, in its response (July 2010) to the report issued to the Ministry (July 2010), the Ministry has stated that it accepted the recommendation of 'no cap' by the TRAI in October 2007. It seems that the Ministry, by

issuing the press release in advance in September 2007 had, in effect, circumvented the recommendation of TRAI by taking an action counter to the recommendation and its acceptance by DoT in October 2007. To further compound the earlier decision, of restricting consideration of applications received up to 1.10.2007, the DoT further advanced this date to restrict issuance of Letters of Intent (LoIs) only to applications received up to 25.09.2007. This was ostensibly to avoid legal implications in view of the shortage of spectrum for GSM services.

**(Paras 4.1.2, 4.6)**

### **(vii) FCFS Policy was not followed**

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

**(Para 4.6)**

### **(viii) Issue of license to ineligible applicants**

Process followed by the DoT for verification of applications for UAS licences for confirming their eligibility lacked due diligence, fairness and transparency leading to grant of licences to applicants who were not eligible. Eighty five out of the 122 licenses issued in 2008 were found to be issued to Companies which did not satisfy the basic eligibility conditions set by the DoT and had suppressed facts, disclosed incomplete information and submitted fictitious documents for getting UAS licenses and thereby access to spectrum.

**(Para 4.7.1)**

### **(ix) Presumptive value of spectrum allocated to 122 new UAS licencees and 35 Dual Technology licencees in 2007-08**

Any loss ascertained while attempting to value the 2G spectrum allocated to 122 licencees in 2008 can only be 'presumptive', given the fact that there are varied determinants like its scarcity value, the nature of competition, business plans envisaged, number of operators, growth of sector etc. which, depending upon the market situation, would throw up the price that it commands at a given point of time. Instead of attempting to come to a specific value of 2G spectrum which could have been possible only through an efficient market discovery process, we have looked at the various indicators to assess a possible (presumptive) value, from the records made available to Audit rather than going for any mathematical/econometric models.

**(Para 5.1)**

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

**(Para 5.2)**

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

**(Para 5.3)**

3. Many of the new UAS licensees of 2008 have been able to attract substantial amount of Foreign Direct Investment (FDI). Value of a new company with no experience in the Telecom sector can primarily be taken as that of the license and access to spectrum. This would have been the prime consideration for foreign companies while infusing large amount of capital in the form of equity in these companies shortly after award of license. Based on this indicator, value of a pan India license works out between ₹ 7,758 crores and ₹ 9,100 crores as against ₹ 1,658 crores priced by DoT. The total value for 122 new licences and 35 Dual Technology licencees would be between ₹ 58,000 to ₹ 68,000 crores as against the actual revenue of ₹ 12,386 crores realized.

**(Para 5.4)**

Thus, on the values determined through various indicators, the presumptive value of 2G spectrum on account of grant of 157 licenses in different circles during 2007-08 would be in the range of approximately ₹ 58,000 crores to ₹ 1,52,038 crores.

(Para 5.5)

**(x) Value of additional spectrum allotted to 13 existing operators beyond contracted quantities**

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

(Para 4.10, 5.5)

**(xi) Presumptive loss of spectrum allocated to 122 new UAS licensees and 35 Dual Technology licenses in 2007-08**

The presumptive loss as per the methods adopted would be as given in the table below:

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



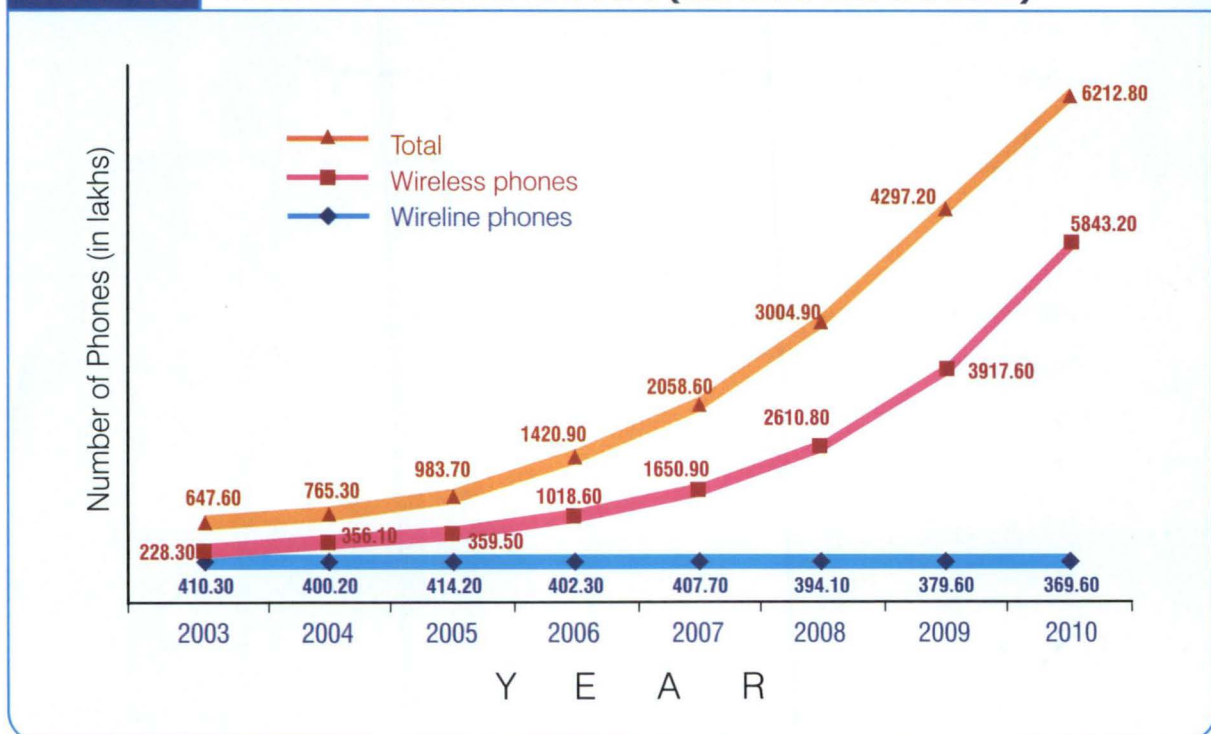
# Chapter 1 Introduction

# 1

## 1.1 Growth in Telecom Sector

In the recent times, India has emerged as one of the fastest growing telecom markets in the world. The Department of Telecommunication (DoT) under the Ministry of Communications and Information Technology (MoC&IT) was the monopoly agency providing communication facilities in India till 1994 when for the first time private players were invited to contribute to the telecom sector by way of investment for providing telecom services in the country. Since then it has been one of the few sectors in India, which has witnessed widespread structural and institutional reforms. With 62.13 crore telephone connections (Fixed lines- 3.70 crore and wireless 58.43 crore) as on March 31, 2010, it is the second largest network in the world after China. The eleventh plan target of 50 crore connections by 2010 stood achieved in September 2009 shown in the chart 1.1 below.

**Chart - 1.1 Growth of Telecom Network (Wireline and Wireless)**



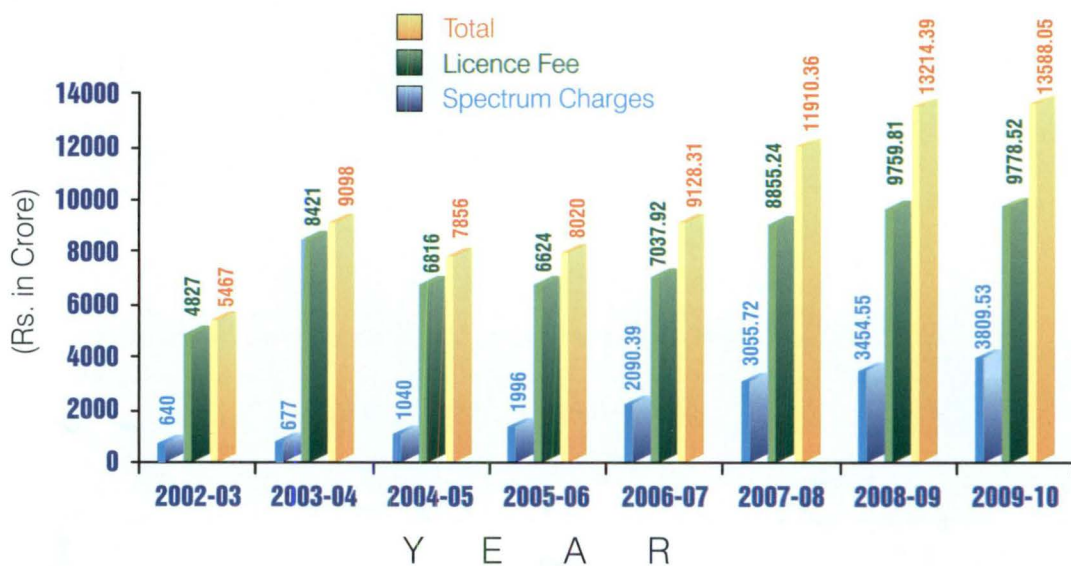


## 1.2 Overview of Policies

**1.2.1** The first National Telecom Policy was announced by the Government in 1994 (NTP-94) with the objectives of providing telephone on demand, provision of world-class services at reasonable prices and universal availability of basic telecom services to all villages. NTP-1994 recognized that the required resources for achieving these targets could not be made available only out of Government sources and private investment and involvement of the private sector was required to bridge the large resource gap.

**1.2.2** While there were several achievements under the NTP 1994, some of the objectives could not be met. Acknowledging several changes both at the national and global scenario in the telecom sector; a New Telecom Policy- NTP-99 was announced by Government w.e.f. 1st April 1999. Licensing of all telecom services thereafter was to be under the policy framework of NTP-99, which sought to significantly redefine the competitive nature of the industry. The new policy lifted the restrictions on the number of service providers for the Basic Service Providers (BSPs) as well as the Cellular Mobile Service Providers (CMSPs) making it open for participation by all bidders who satisfied the conditions of the DoT. The new policy also required all operators who were under the fixed licence fee regime to migrate to a revenue sharing regime. In the revenue sharing model, the operators were required to pay a percentage of their Adjusted Gross Revenue (AGR) as annual license fee and spectrum usage charge to the Government. The percentage of revenue share depended on the service area\* where they offered their services.

**Chart - 1.2 Revenue on account of Spectrum charges and Licence Fee**



\* The country is divided into 22 Service Areas. Earlier it consisted of 19 Telecom Circles and 4 Metros for providing Unified Access Services (UAS). Subsequently Chennai was merged with Tamil Nadu service area.

- 1.2.3** The Union Cabinet based on the recommendations of Group of Ministers (GoM) on Telecom matters constituted in September 2003 approved the policy for licensing of Unified Access Services. The GoM had considered the recommendations submitted by Telecom Regulatory Authority of India (TRAI) on 27 October 2003. The policy drew upon NTP-99. Through this approval, Cabinet besides, a number of other related decisions, charted the course to a Universal Licensing Regime. Guidelines for issue of licenses under UAS were issued on 11 November 2003 where after licences were issued only under UAS.
- 1.2.4** In April 2007, the DoT sought the opinion of the TRAI on some specific points including that of putting a cap on the number of access service providers in a service area, as radio frequency spectrum required for wireless services was not sufficient to meet the increasing demand from UAS Licensees. TRAI recommended (August 2007) that no cap be placed on the number of access service providers in any service area. the DoT issued 122<sup>1</sup> new licences to 17 companies in 2008 and spectrum was allotted to all operators except for four in Delhi service area (December 2009).

There were 241 Unified Access Service (UAS), 2 Basic Service (BS) and 38 Cellular Mobile Telephone Service (CMTS) Licences as on 31 March 2010.

- 1.2.5** TRAI in August 2007 also recommended that “a licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by the existing licences using the alternative technology or which would be paid by the new licensee going to use that technology”. 35 licences were permitted to use dual spectrum and allocated spectrum in 2007-08.

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<sup>1</sup> In January 2008 DoT issued 121 Letters of Intent (LOIs) against which only 120 licenses were issued. Two more licenses were issued in July 2008.

## BOX-1

Policy Stage	Methodology for Entry of Operators	Fixed Fee Regime
<b>NTP 1994</b>	<ul style="list-style-type: none"> <li>■ In first phase (Nov-94), two CMTS licences were awarded in four Metro cities on beauty parade* basis.</li> <li>■ In second phase (Dec-95), two CMTS licences were awarded in 18 telecom circles through a process of competitive bidding.</li> <li>■ Six companies were awarded Basic service licences through bidding process.</li> </ul>	<i>License Fee was pre-determined and bids were called on selected parameters.</i>
<b>NTP 1999</b>	<ul style="list-style-type: none"> <li>■ All existing BSOs and CMSPs were required to migrate to the new regime.</li> <li>■ Number and timing of new licenses was to be based on TRAI's recommendations.</li> <li>■ BSNL and MTNL became the third CMTS operator in 2000.</li> <li>■ Seventeen new CMTS licences as fourth cellular mobile operators in 2001 through a multi-stage bidding process.</li> <li>■ Twenty Five new Basic service licences in 2001 based on eligibility as per the guidelines issued on January 2001.</li> </ul>	<ul style="list-style-type: none"> <li>- One-time entry fee before signing the license agreement.</li> <li>- A fixed percentage of Adjusted Gross Revenue (AGR) as annual license fee.</li> <li>- A fixed percentage of Adjusted Gross Revenue (AGR) of mobile services as annual spectrum charge.</li> </ul>
<b>UAS 2003</b>	<ul style="list-style-type: none"> <li>■ All the existing BSOs and CMSPs were given option to migrate to UASL regime; by BSOs paying the difference of entry fee paid by them that as paid by the fourth CMTS operator in 2001 and CMTS operator at nil entry fee.</li> <li>■ 51 new UAS licences were awarded between 2004 to March 2006 at the entry fee determined in 2001.</li> <li>■ 122 new UAS licences awarded in 2008, also at the same entry fee of 2001.</li> </ul>	<ul style="list-style-type: none"> <li>- One-time entry fee before signing the licence agreement.</li> <li>- A fixed percentage of Adjusted Gross Revenue (AGR) as annual licence fee.</li> <li>- A fixed percentage of Adjusted Gross Revenue (AGR) of mobile services as annual spectrum charge.</li> </ul>
<b>Introduction of dual technology</b>	<ul style="list-style-type: none"> <li>■ Approvals were issued in 2007-08 for dual technology (for using both CDMA and GSM) in 35 service areas at the entry fee equivalent to the migration fee fixed in 2001.</li> </ul>	<ul style="list-style-type: none"> <li>- One-time entry fee equivalent to migration fee for UAS based on 2001 entry fee of CMSPs was charged for allowing DT in 2007.</li> <li>- Revenue sharing as for UAS 2003.</li> </ul>

\* Beauty parade fixes the price of spectrum to ensure optimum utilization by awarding it to the user(s) who score the highest against a group of pre set criteria (such as rural coverage or the fulfillment of roll out obligations).

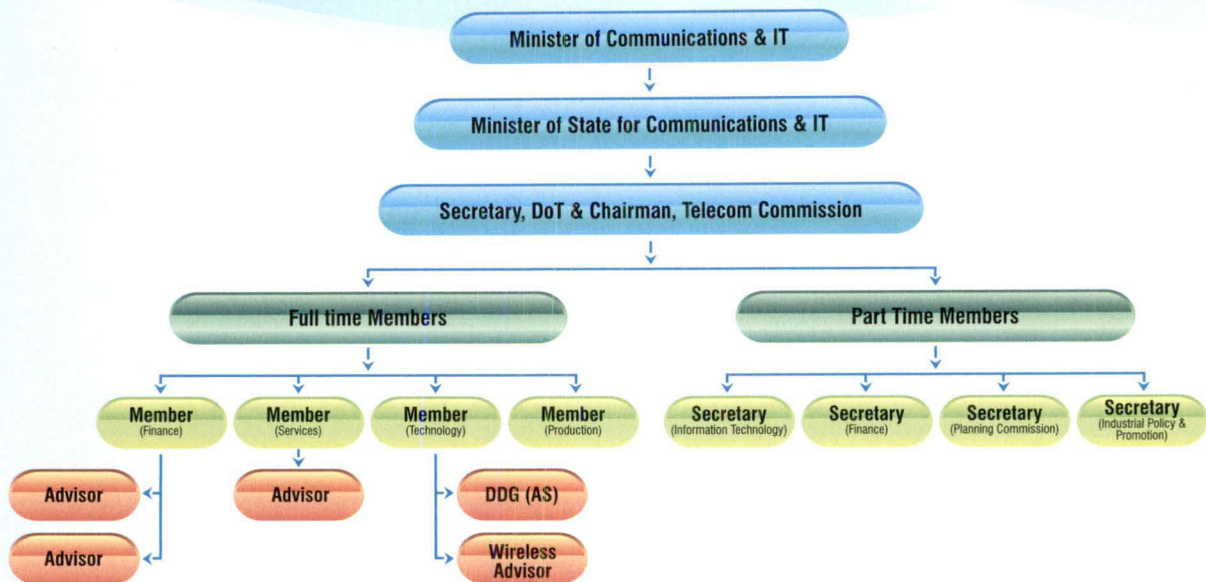
The TRAI was set up in March 1997 and its mandate included making recommendations on the following matters:

- need and timing for introduction of new service providers.
- terms and conditions of the licences to be given to service providers and
- efficient management of the available spectrum.

TRAI also had to notify the rates at which telecommunication services within India and outside were to be provided under the TRAI Act, through Gazette notifications, from time to time. NTP-99 stipulated that the Government will invariably seek TRAI's recommendations on the number and timing of new licences before taking decision on issue of new licenses. The original Act of 1997 under which it was set up was amended by the TRAI (Amendment) Act 2000. The new Act provided for the establishment of two separate bodies i.e. the Telecom Dispute Settlement and Appellate Tribunal (TDSAT) for dispute settlements between the licensor and licensees, between two or more service providers and between service providers and consumers and TRAI for regulatory functions. Thus, TRAI as a regulator has only an advisory role in the policy matters.

The work relating to formulation of policy, issue of licences for various telecom services and spectrum allocation are under the overall control of Ministry of Communications & IT. Secretary, DoT, reports to the Minister (Communications and IT) and is assisted by the Member (Finance), the Member (Technology), Member (Services), Member (Production) and Wireless Advisor.

The Secretary, DoT, is also the Chairman of the Telecom Commission which is a high powered commission, established in 1989, consisting of four full time members (Production, Services, Technology and Finance) and four part-time members (Secretaries of the Ministries of Finance, Industrial Policy and Promotion, Information Technology and Planning Commission). The major functions of the Telecom Commission include policy formulation, review of performance, licensing, wireless spectrum management, administrative monitoring of PSUs, research and development, standardization/ validation of equipment and International Relations.



## 1.6 Issue of Licences

Operators intending to provide telecommunication services have to obtain a licence from the DoT. The guidelines for issuing new licences for various Telecom Services as approved (December 2005) by the DoT stipulated that an applicant would have to apply for a licence along with the requisite processing fees. Applicants meeting the eligibility criteria prescribed by the DoT would be issued a Letter of Intent (LoI). Thereafter the applicant was required to deposit the prescribed entry fees, submit the requisite Bank guarantees and other necessary documents before the grant of licence.

## 1.7 Spectrum Allocation

**Radio Frequency Spectrum** is the entire range of wavelengths of electromagnetic radiation which is used as carrier of wireless transmission and thus a basic requirement for providing wireless services. It is a finite but non-consumable global natural resource and commands high economic value in the telecommunication sector.

Radio frequency spectrum, i.e., the entire range of wavelengths of electromagnetic radiation, is a finite global natural resource with a high economic value, due to its heavy demand in the telecommunications sector. The word 'Spectrum' basically refers to the collection of various types of electromagnetic radiations of different wavelengths. Frequencies are allocated by the International Telecommunication Union (ITU) at "World Radio Communication Conferences". Allocations are made on a regional basis and are made for different services. Allocation of spectrum in ITU Radio Regulations exists from 9 KHz to 1000 GHz. In India, the radio frequencies are confined between 9 KHz and 400 GHz.

Some of the important and typical characteristics of the radio frequency spectrum are that:

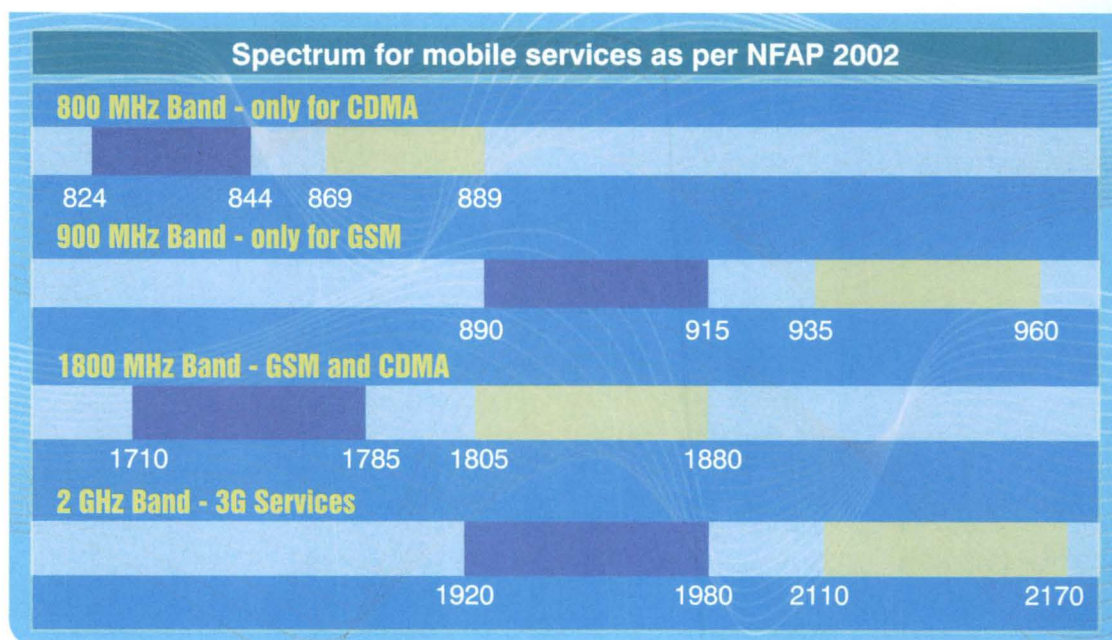
- radio frequency spectrum does not respect international geographical boundaries as it is spread over a large terrestrial area.

- use of radio frequency spectrum is susceptible to overlapping interference and requires the application of complex engineering tools to ensure interference free operation of various wireless networks.
- unlike other natural resources, radio frequency spectrum is not consumed upon its usage. It is also liable to be wasted if it is not used optimally and efficiently.

Assignment of radio frequencies is governed by international treaties formulated under the aegis of the ITU. India falls in the ITU Region III.

In India, Mobile services which use GSM technology work in the frequency bands of 900 & 1800 MHz and those in CDMA technology work in the 800 MHz band. 800, 900 and 1800 MHz bands were earlier allotted to the defence services for their mobile communication usage. Presently, 25 MHz spectrum in 900 MHz band (890 – 915 / 935 – 960 MHz) and 75 MHz in the 1800 MHz band (1710 – 1785 / 1805 – 1880 MHz) is earmarked for GSM services.

For CDMA services, 20 MHz spectrum in the 800 MHz band (824 – 844 / 869 – 889 MHz) is available. Spectrum for the roll out of 3G services (voice, data and video) were allotted through e-auction in the 2.1 GHz (1920 – 1980 / 2110 – 2170 MHz) band. All the above bands were historically allotted to the Defence sector for their mobile and point to point communication needs in India. Therefore, their cooperation was also required to make them available for commercial use. To facilitate the same, Government of India (GoI) has allocated funds from time to time to provide optical fibre cables for use by the Defence Sector.



**1.7.1** The Wireless Planning & Coordination (WPC) Wing in the Department of Telecommunications deals with the policy of spectrum management, wireless licensing and frequency assignments. The spectrum allocation policy is contained in the National frequency allocation plan (NFAP) which is based on the International Radio Regulations. The NFAP (1981) and its subsequent revisions in consultation with the national users through the forum of Standing Advisory Committee on Radio Frequency Allocation (SACFA) provides the basis for assignment of frequency.

Wireless licence is an independent licence and therefore any UAS licence holder intending to offer mobile services has to obtain a separate wireless licence from WPC wing.

## BOX-2

### Allocation of contractual and additional spectrum

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

# Chapter 2 Audit Approach

# 2

## 2.1 Audit Scope and Methodology

The audit was conducted during January 2010 to September 2010 covering the period from 2003-04 to 2009-10. The audit covered the implementation of policy for Unified Access Licensing Regime and allocation procedure for 2G spectrum to new as well as existing operators under the UAS. The audit was conducted on the basis of records/information to the extent made available by the DoT, and the related files of the DoT seized by the CBI in October 2009 made available to Audit. The relevant files produced by the Ministry of Finance (MoF) were also examined before finalising the audit comments. Audit also accessed public documents available on the website of the Ministry of Corporate Affairs to confirm the compliance of licensee companies to the conditions of UASL Guidelines and the provisions of the Companies Act. The Report takes into account, the replies by the DoT and the MoF in response to the audit observations communicated to them in July 2010 and September 2010. As per the Performance Audit guidelines, Entry and Exit Conferences were held on 23 December 2009 and 20 May 2010 respectively. The DoT sought a further meeting with Audit to discuss the draft audit Report. The meeting was held on 4 October 2010. This Report takes into account the discussions between audit team led by the Deputy Comptroller and Auditor General and the DoT team led by Advisor (Finance).

## 2.2 Audit Objectives

Audit was taken up with the objectives of ascertaining as to;

- Whether the policy for issue of licence under the Unified Access Services (UAS) was implemented efficiently;
- Whether the UAS licenses were issued and radio frequency spectrum was allocated in a fair, transparent and efficient manner and
- Whether the potential for revenue generation to Government was optimally managed.



### 2.3 Organisation of Audit findings

The audit findings have been organised in three chapters for convenience of understanding

- Chapter 3 includes the issues related to the implementation of UAS policy;
- Chapter 4 deals with procedures adopted by the DoT for issue of licences and allocation of spectrum;
- Chapter 5 aims at assessing the financial impact of various deficiencies brought out in Chapter 3 and 4.

### 2.4 Acknowledgement

We place on record our sincere appreciation for the cooperation of the Department of Telecommunications, Ministry of Finance and the Central Bureau of Investigation in facilitating our audit.

# Implementation of Unified Licencing Regime

## 3.1 Gaps in implementation of UAS regime

In October 2003 TRAI submitted its recommendations on Unified Licensing regime which envisaged total elimination of service based licensing. Unified Licence was an approach towards convergence of access media. Full implementation of the new regime was to be completed in two phases. The Union Cabinet approved the TRAI report in October 2003. Phase I was the first step of migration of existing licensees to the Unified Access Licensing Regime. This was to be followed by a second phase of a fully Unified Licensing /Authorisation Regime having all telecom services under one licence. This was for grant of licences to new operators. However, the benefits of Phase I were extended to new operators. Ministry replied that TRAI had submitted two more recommendations one on Unified Licensing (January 2005) and another on Spectrum Related issues (May 2005). Though Unified licensing was the first step towards convergence, it was not implemented since the Convergence Bill lapsed in Parliament. Thus the ultimate objective of Unified Licensing did not materialise. DoT however, as explained earlier did not revisit the Unified licensing regime but implemented it for new licensees also.

- 3.1.1** TRAI, in its report on Unified Licensing accepted by Government in October 2003, had recommended that Unified Licence Regime should aim at automatic licensing/authorisation for telecom services subject to notification to Regulatory Authority and compliance with published guidelines by operator thereby removing all barriers for growth in the sector. The underlying principle was to allow licence at nominal entry fee and price the spectrum separately, it being a scarce public resource. TRAI had further observed that *“spectrum was to be distributed by a mechanism that it is allocated optimally to the most efficient user”*.
- 3.1.2** Unified Licensing/Authorisation being the main objective, TRAI had recommended a two-phase implementation. Recognizing that primary objective of growth in tele-density depended on securing access network at low cost, in the first phase, unification of access services at the Circle level was recommended whereby the service providers of new Unified Access Licensing Regime would be able to offer basic and/or cellular services using any technology (GSM or CDMA). The second phase was to be soon followed by defining the guidelines and rules for fully Unified Licence/Authorisation Regime.

**3.1.3** Based on the recommendations of Group of Ministers which agreed with the principles laid down by TRAI in its Report, Cabinet (31 October 2003) approved the proposal for charting the course for Universal Licensing Regime in the following manner:-

- A two-stage process; the Unified Access Regime for basic and cellular operators allowing a migration path to existing BSPs and CMSPs in the first phase to be implemented immediately followed by a second phase of a fully Unified Licensing/Authorisation Regime within six months, bringing all telecom services under one licence, after a process of detailed consultation by TRAI;
- Fee paid by the fourth cellular operator to be used as benchmark for migration of BSOs to the new access regime and no fee to be paid by the existing CMSPs for migrating to new regime;
- The DoT to be authorised to finalise details of implementation of UAS and the fully Unified Licence Regime with the approval of the Hon'ble Minister of Communication & Information Technology (MoC&IT) based on the recommendations of TRAI.

In pursuance to the Cabinet's approval, the DoT issued the guidelines on UAS Licencing (11 November 2003), for moving towards UASL regime by giving the option to all existing BSOs and CMSPs to migrate to UASL regime. The guidelines also included a condition that "All applications for new Access Services Licence shall be in the category of Unified Access Services Licence." There was ambiguity regarding entry fee to be charged from the new licensees as TRAI had not given any recommendation regarding introduction of new operators in the first phase of UASL regime. Secretary, DoT, spoke to the Chairman, TRAI who clarified (14 November 2003) that entry fee of the new unified licensee would be the entry fee of 4<sup>th</sup> Cellular Operator and in service areas where there is no fourth operator, the entry fee of existing BSO fixed by the Government (based on TRAI recommendations). DoT decided to receive all applications under UAS without revision of the spectrum allocation procedures/revision of entry fee, which automatically lifted the restriction on the number of operators in the UAS regime.

#### **3.1.4 TRAI's Recommendations of 2003 not followed in spirit**

In its recommendation, TRAI had considered three alternatives for migration of existing operators in para 7.16 to 7.18 of their Report submitted to Government on 27 October 2003, including that of bidding by the existing and new prospective operators, but did not favour it on the grounds of likely delay in implementation of UAS regime. TRAI recommended a third option in para 7.18 of its Report which suggested migration of existing BSPs by charging entry fee determined through a bidding process in 2001 for the fourth cellular operator and no entry fee from the existing CMSPs. There was no mention regarding entry fee to be charged from the

new licensees under UAS, as entry of new operators had not been recommended by TRAI in the first phase of UAS which was intended only for migration of existing BSOs and CMSPs. Thus, the first phase of six months was meant for migration of existing operators. TRAI had recommended new operators only in the fully Unified Licensing Regime. TRAI had also suggested that ***“taking cognizance of spectrum availability, TRAI is in favour of introducing more competition. However, we feel that in lieu of more cellular operators it would be more appropriate to have competition in the Unified Licensing framework which will be initiated after 6 months”*** (Para 7.37). TRAI in their same Report submitted to Government had recorded in para 7.39 that ***“the induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum. As the existing players have to improve the efficiency of utilisation 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 fourth cellular operator”***. TRAI also recommended that the guidelines for Unified licensing should include nominal entry fee, USO etc.

Thus, the stipulation of the DoT to benchmark entry fee in respect of new licenses also at the same level which was allowed for migration of existing BSOs was not consistent with the recommendations of TRAI (2003). This issue was neither deliberated by the TRAI in its recommendations (2003) nor at the Telecom Commission level nor by the GoM on Telecom matters constituted in September 2003. The Cabinet also did not give any directions on the issue.

- 3.1.5** One of the major objectives of movement towards Unified licensing regime, of which first step was migration of existing licensees, was to ultimately de-link spectrum from licence and encourage its efficient use by rational allocation procedure and pricing. Under the fully unified licensing regime it was envisaged that the licence fee would be nominal allowing the operator to provide different telecom services with a separate procedure /regulation for allotting spectrum for which TRAI had yet to give its recommendations. TRAI's recommendations in this regard have not yet been implemented by the DoT, which also meant that an important and crucial objective of 2003 policy remained unachieved.
- 3.1.6** The Ministry justified the non revision of entry fee on the ground that the entry fee recommended by TRAI in August 2003 was not only for migration of existing operators but also for new prospective UASL operators as well and the recommendations were approved by the Cabinet on 31.10.2003. Further, the Union Cabinet had authorised DoT to finalise the details of implementation with the approval of Hon'ble MoC&IT and hence the guidelines were issued in November 2003. The Ministry also stated that their action was also consistent with the clarification given by the then Chairman TRAI (November 2003). It was also stated that TRAI submitted two recommendations on fully Unified Licensing regime in 2005 but could not be implemented since the Convergence Bill lapsed in Parliament.

The contention is not correct as the issue of the non revision of entry fee for new prospective UASL operators had not even been raised in the note put up to the Cabinet. Even TRAI in their report (October 2003) had recommended for a two stage implementation of the UAS licensing regime in which the first phase was regarding migration of existing BSOs and CMSPs to the UAS and the second phase for the new UAS licences. The first phase was to be implemented immediately while the second phase was to commence only after the receipt of fresh recommendations of TRAI within six months (Para 7.1 of TRAI recommendations of October 2003). Therefore the issue of non revision of entry fee for new licensees/operators was not discussed in any forum- Telecom Commission, TRAI, GOM or Cabinet. If the DoT needed more clarity in implementing recommendations of the TRAI, it should have written for clarifications from the TRAI on the specific issues. Raising/discussing the issues on telephone and getting clarification even in a letter from the Chairman TRAI on the same day in his individual capacity on such a critical issue shows undue haste and an avoidance for following the normal official procedures by the DoT. Further, the Chairman, TRAI did not have the authority to issue a clarification on an issue which had not been discussed and deliberated upon in the Authority. The clarification was not in line with the recommendations of TRAI as para 7.39 of the Report read that “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 fourth cellular operator”. Any such clarification, which altered the TRAI's recommendations substantively, should have been taken to the GoM and Cabinet as their decision was based on the original TRAI's recommendations.

- 3.1.7** The DoT's action of applying the rates approved for the existing operators for migrating to UAS regime, to new applicants also by relying on the clarification of the Chairman TRAI in his individual capacity was inconsistent with the recommendations of the TRAI (2003) and went beyond the authority given by the Cabinet. It also violated all canons of financial propriety. The DoT had to resort to informal clarifications from TRAI before concluding that new applications would also be at the entry fee of price determined for 4th CMSP in 2001 as against TRAI's recommendation of introducing new operators in the existing regime through a multi-stage bidding process. Elimination of bidding process without delinking licensing from spectrum was not intended by TRAI.

The decision to continue to charge entry fee at 2001 level even from the new licensees under UAS regime in 2003, was thus not deliberated either in the TRAI or Telecom Commission or GoM or Cabinet.

The MoF, right from the year 2003, quoting international practises and scarcity factor had maintained that auction of spectrum and its trading under a regulatory frame-work could induce competition and transparency in the system and would result in most efficient utilisation of spectrum. TRAI in October 2003, while recommending Unified Services Licensing, had also proposed to submit a separate report regarding spectrum allocation and pricing. Based on these inputs, Cabinet, in its decision of 31 October 2003 while charting the course to the UAS and US licencing regime had also approved the following:

- adequate spectrum would be made available for unimpeded growth of Telecom services for which WPC wing of the DoT and Ministry of Defence(MoD) should coordinate;
- MoF will provide MoD adequate budget and;
- The DoT and the MoF would discuss and finalise pricing formula for spectrum including incentive for efficient use and disincentive for sub-optimal usages.

**3.2.1** Thus, spectrum pricing issue was to be decided in consultation with the MoF. However, when a GoM was constituted in February 2006, its Terms of Reference (ToR) were modified at the instance of the DoT to keep the issue of spectrum pricing outside its purview. Though MoF insisted for its inclusion in the ToR for the GoM, DoT maintained that 'spectrum pricing was within the normal work carried out by them'. The MoF opined that spectrum pricing was an issue which has far reaching consequences for the economy and needed to be debated, but this was not considered at the highest level and the views of the DoT prevailed in finalisation of ToR. The GoM's role, in December 2006, at the instance of the DoT, was confined to issues concerning 'spectrum vacation'. Thus, without MoF getting a chance to contribute to the issue of pricing of spectrum, new licences continued to be issued along with the spectrum.

It was also noted that the DoT kept the applications for UAS licence pending since March 2006 on the grounds of non-availability of spectrum, though a decision to get the spectrum vacated from MoD was taken way back in 2003. DoT admitted that prior to April 2007, availability of spectrum was not quantified and GSM spectrum allotments to service providers/operators were made after due co-ordination with MoD on a case to case basis. Since the availability of spectrum had not been quantified till April 2007, the basis for keeping the applications pending and seeking TRAI recommendation (April 2007) on limiting the number of Access Service Providers on the grounds of non-availability of spectrum is inexplicable.

- 3.2.2** Again in August 2007, TRAI in its report observed that the entry fee as it existed in 2001 was not a realistic price for obtaining a licence in the changed situation considering the dynamism and growth of telecom sector and it needs to be reassessed through a market mechanism. It also observed that value of spectrum was not correctly reflected in the extant pricing model and recommended again for de-linking of spectrum from licence. Yet, TRAI did not favour any change in 2G spectrum pricing even for new entrants on the grounds that it would affect the principles for level playing field for the new operators. It is to be noted that the role of TRAI, as per the TRAI Act is primarily to foster competition and to ensure a level playing field in the sector. Generation of revenue for the Government is not within the scope of its mandate and hence not perhaps a basis for framing its recommendations. Thus, while accepting the recommendations of TRAI, protecting the financial interests of the Government should have been an important consideration for the DoT, more so, when it had left out MoF from the decision making process with regard to the pricing formula of spectrum.
- 3.2.3** The DoT in response to the audit observation, stated (July 2010) that in February 2006 the then Hon'ble MoC& IT had apprised the Hon'ble Prime Minister that one major bottleneck in the sustained growth of telecom sector was the availability of spectrum and not its allocation and thus ToR was revised with the approval of the Hon'ble Prime Minister.
- 3.2.4** While ensuring availability of spectrum which is also at a price, the DoT should not have lost sight of the need for a realistic price for 2G spectrum, especially in the light of the fact that the price being charged was discovered from a nascent telecom market in the year 2001 and was approved by the Government as benchmark only for the purpose of allowing migration of Basic Operators to UAS regime in 2003 for operating mobile services.
- 3.2.5** MoF while agreeing with the Audit view stated that the Ministry has at various points of time been advocating for a more rational mechanism for allocation and pricing of 2G spectrum. Right from August 2003 they have been recommending greater orientation in spectrum allocation, keeping efficiency and optimal utilisation considerations in mind, through auction to users, who are willing to pay the maximum fee. MoF concurred with Audit that the assumption of the DoT to the effect that spectrum pricing was within its normal work allocation was not tenable. The MoF observed that ***“in view the directions of the Union Cabinet (October 2003) and particularly in the absence of requisite clarity in the recommendations of TRAI and decision of the Union Cabinet, in regard to the fixation of entry fees for new licensees, prudent principles of governance would have required DoT to engage in further inter-ministerial discussions particularly with the MoF. The fact that this was not done despite repeated advices from MoF does give scope for creation of doubt, on the validity of the decision taken to fix the entry fee for new licenses at 2001 levels”.***

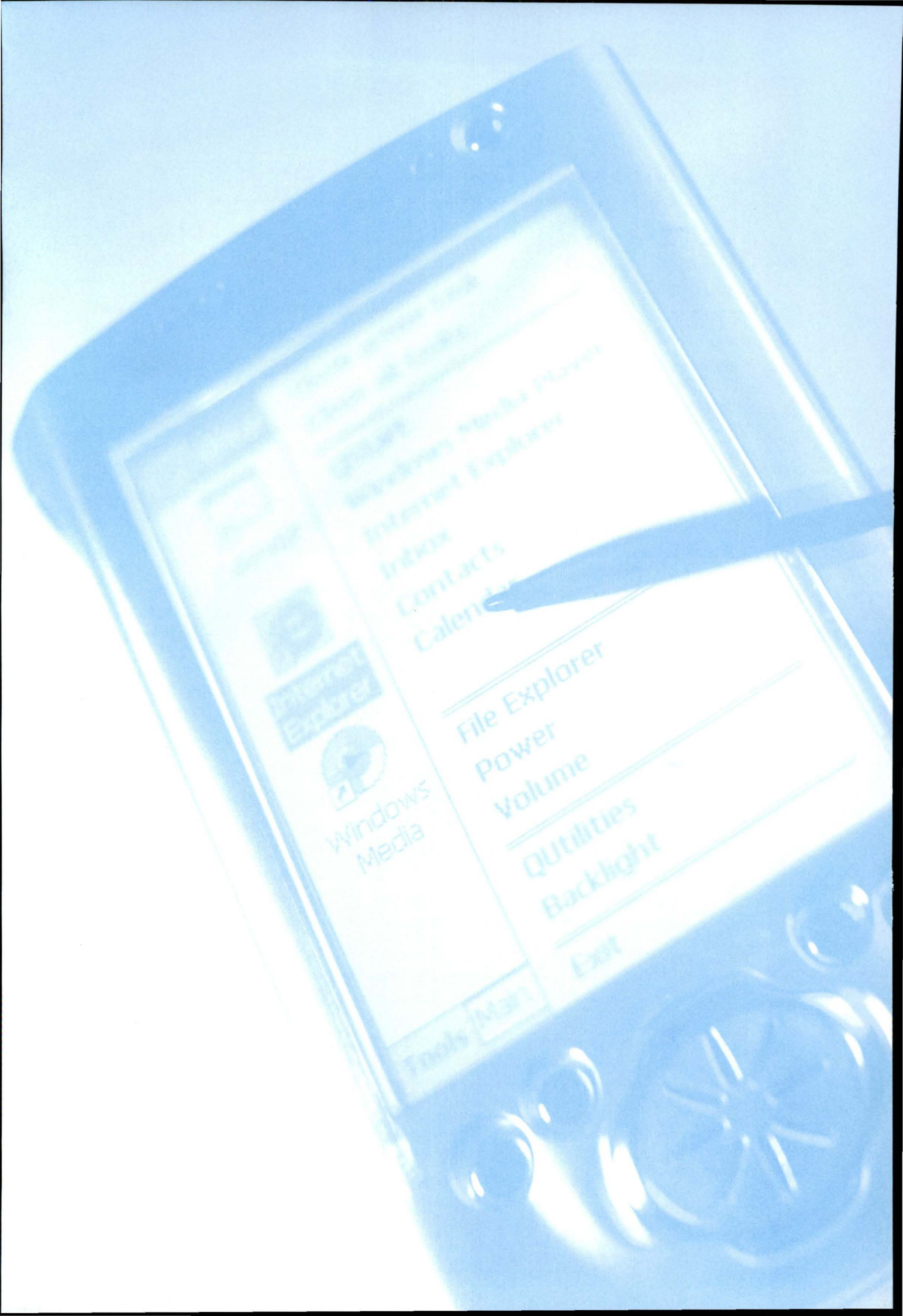
It is important for a growing economy that a policy decision is subject to review /is revisited constantly with adequate feed-back for application of collective wisdom of Government, particularly if it relates to a sector witnessing transition and operating within a dynamic environment, as was the case with the Telecom sector during 2003-2009. In this case, despite gaps in policy implementation as detailed above, there was no attempt on the part of the DoT to review the implementation processes holistically, which is one reason for the pricing issue remaining unaddressed.

When two-stage Unified Access Licensing policy could not be implemented fully as cleared by the Cabinet in October 2003, it was never again placed before the Cabinet for charting/approving the next /alternative course of action. The Cabinet did not get the chance to consider the changed scenario whereby Unified Services Licensing Regime introduced with the intention of de-linking spectrum allocation from licensing could not be fully achieved. An approved interim stage was thus treated as a final destination by the DoT.

- 3.3.1** DoT justified continuance of 2001 rates for issue of licenses to Audit stating that the Government treats telecom sector as an infrastructure sector and accordingly the Government's broad policy of taxes and regulation of the sector are promotional where revenue considerations play a secondary role. Also, the policy of grant of UAS licences was not changed since introduction because this has resulted in an unprecedented growth of telecom services. Change in policy is considered when the existing policies are not delivering desired results which were not the case in the telecom sector.
- 3.3.2** Policies are evolved through the initiatives of the concerned Ministries. The response of DoT suggested that it had not taken into account the unprecedented growth in the telecom sector, the scarcity of the resources and the increasing economic value of 2G spectrum, when it decided not to review the pricing of spectrum. This was despite TRAI's observation that value of spectrum needed to be reassessed through a market mechanism and MoF also was advising for rational pricing.

Thus, despite all agencies having full knowledge of scarcity and under pricing of spectrum, the entry fee for issue of licences continued to be pegged at 2001 rates even in 2007 without delinking and independently discovering the price of spectrum through a market mechanism. Meanwhile, the entire scenario in the telecom sector had transformed amidst unprecedented growth in the sector.





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- Windows Media Player
- Inbox
- Contacts
- Calendar
- File Explorer
- Power
- Volume
- Utilities
- Backlight

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# Procedures Adopted in Issue of UAS Licences and Allotment of Spectrum

Before detailing the audit findings relating to procedural aspects of issue of licences and allocation of spectrum various steps involved have been listed out in the following chart.

Procedures for Issue of Licence	
Receipt of Application	<ul style="list-style-type: none"> <li>Applications received in central registry and date recorded for making priority list based on date of receipt of application</li> <li>Enclosures includes requisite processing fee</li> </ul>
Processing of applications	<ul style="list-style-type: none"> <li>Scrutiny of application based on the criteria contained in the guidelines</li> <li>Final Priority list of eligible applicants drawn up</li> </ul>
Issue of Lol	<ul style="list-style-type: none"> <li>Lol to be issued in 30 days by post to the eligible applicants</li> </ul>
Compliance of Lol conditions	<ul style="list-style-type: none"> <li>Compliance to Lol conditions within 15 days from the date of issue of Lol</li> <li>Payment of one-time entry fee</li> <li>Submission of Performance Bank Gurantee (PBG) and Financial Bank Gurantee (FBG) by the applicant</li> </ul>
Issue of License	<ul style="list-style-type: none"> <li>Signing of UAS license</li> <li>Licensee becomes eligible to apply for wireless license</li> </ul>
Application for spectrum	<ul style="list-style-type: none"> <li>Application for wireless license</li> <li>Allocation of spectrum on first-come-first serve (FCFS) basis</li> </ul>

## 4.1 Issue of UAS Licences and Allocation of 2G Spectrum

Gaps in implementation of policy led to a situation, when on the one hand allocation of spectrum was not delinked from licences and on the other hand applications for new licences continued to be received by the DoT without framing guidelines for UASL. The guidelines were finally issued in December 2005 and at that time also spectrum was not delinked from licence as intended through the 2003 policy. Even the provisions of these guidelines were not meticulously followed.

As per guidelines issued for UASL (2005), licences were to be issued on continuous basis without any restriction on the number of entrants in a service area and applications were to be processed within 30 days of submission. Allocation of radio-spectrum and grant of wireless licence was subject to availability and in case UAS licensee was not allocated

spectrum due to non-availability, the Licensee was required to endeavour to roll out services using wire-line technology. However, applications for issue of UAS licence were not processed within stipulated period and delayed inordinately by the DoT. In 2004-05, 14 out of 15 applications for grant of UAS Licences were delayed by 608 to 969 days. In 2005-06, all 9 applications were delayed by 232 to 421 days. All 29 applications for issue of new UAS Licence received in 2006-07 were not processed till October 2007 without assigning any reason/justification on records and without sending any communications to the applicants. This largely opaque and uncertain delivery system coupled with fast paced growth in the telecom sector during the decade led to heavy rush of companies to the sector.

After issuing 51 new licences under UAS regime since 2004, and keeping 53 applications pending from January 2006, DoT sought recommendation from TRAI in April 2007 on the issue of limiting the number of access providers in each service area. TRAI, in its report of 28 August 2007 recommended 'no cap' on the number of licences.

#### **4.1.1 Undue Haste in Receiving and Processing Applications**

Despite the TRAI's recommendation of 'no cap' which was accepted by the DoT in October 2007, on 24 September 2007 DoT issued a Press Release stating that applications for issue of licences would be accepted only up to 01.10.2007. This press notification signaled the possibility of an impending cap in the number of licences to be awarded, which led to a sudden spurt in applications. Till issue of this press release, 167 applications had been received including those remaining unprocessed since March 2006. After introduction of this artificial cap by the DoT, there was a sudden spurt in applications and 408 more applications were received in next 8 days resulting in accumulation of 575 applications till the declared cut-off date of 01.10.2007. This spurt in applications indicated that the applicants were aware that spectrum was a scarce resource and such scarcity would become acute after this round of spectrum allocation, leaving little or no spectrum for future allocations. Further, even this cut-off date was not taken into consideration and on the orders of Hon'ble MoCIT, only applications received upto 25 September 2007 were considered for the issue of LOI "in order to avoid legal implications" as discussed in the succeeding paragraphs

## **4.2 Approval of Telecom Commission not taken**

The recommendations of the TRAI (2007) were crucial from the perspective of the management of the Telecom sector and spectrum management and yet they were not put up to the full Telecom Commission before the acceptance of the recommendations. It is a fact that a meeting of the internal members of the DoT was held on 10 October 2007 to discuss the TRAI recommendations but there was nothing on record in the file to show as to why the recommendations of the TRAI were not taken to the full Telecom Commission.

Neither the agenda papers nor minutes of the meeting of the internal members of the Telecom Commission held on 10 October 2007 to discuss the recommendations of TRAI were circulated among the other members of Telecom Commission i.e. Finance Secretary, Secretary Industry, Secretary IT and Secretary Planning Commission. As such, no meeting of the full Telecom Commission took place between the date of submission of the recommendations of TRAI i.e. 27 August 2007 and the date of issue of LOI to 121 applications i.e. 10 January 2008 to discuss the recommendations of the TRAI. Thus DoT chose to consider the recommendations without the benefit of the inputs from four important secretaries of the Government of India on crucial issues related to Telecom sector. Instead, in view of the unprecedented response from the applicants and the fact that the DoT was not equipped to cope up with the huge demand, they approached Ministry of Law & Justice (MLJ) with four options (Box) for their advice.

Alternatives referred to the Ministry of Law & Justice for opinion of the Learned Attorney General of India/Solicitor General of India for processing new applications:

- FCFS basis in chronological order of receipt of applications in each service area with 7/15 days time for compliance of LOIs as per the procedure existing. Those who will comply with LOI's conditions within stipulated time will retain the seniority of date of application for licence /spectrum.
- LOIs to all applicants who had applied for UASL by 25-09-2007.
- LOIs to all eligible applications received up to the cut off date.
- Any other better approach which might be legally tenable and sustainable.

4.3

#### Advice of the Hon'ble Minister of Law and Justice was ignored by DoT

The heavy rush for applications – 408 new requests in 8 days- and to process them in a fair and transparent manner was a formidable situation DoT had to face and so DoT requested (October 2007) the Ministry of Law & Justice (MLJ) to communicate the opinion of the Ld. Attorney General of India/Solicitor General of India to enable it to handle this unprecedented situation in a fair and equitable manner which would be legally tenable. The matter was considered in the MLJ and Hon'ble MLJ observed (November 2007) that ***“in view of the importance of the case and the various options indicated in the statement of the case, it is necessary that the whole issue is first considered by an Empowered Group of Ministers (EGoM) and in that process legal opinion of the Attorney General can be obtained.”*** The observation of the Hon'ble MLJ was discussed in the Ministry and was treated as “out of context” by the Hon'ble MOC&IT and thus a reference to EGoM for discussion and decision on this important issue was deliberately avoided.

**4.3.1** The Government of India (Transaction of Business) Rules, 1961 stipulates that when the subject of a case concerns more than one department, no decision be taken or order issued until all such departments have concurred, or, failing such concurrence, a decision thereon has been taken by or under the authority of the Cabinet. The second schedule (Rule 7) of TOB Rules further details the cases which shall be brought before the cabinet for decision which includes the following:

- cases involving financial implications on which the Minister of Finance desires a decision of the Cabinet.
- cases in which a difference of opinion arises between two or more Ministers and a Cabinet decision is desired.

DoT justified its actions on the ground that the reference was made to the Ministry of Law and Justice in the background of large number of applications and that their advice was discussed in the Department and the existing policy for grant of UAS licences was approved by the Hon'ble MoC& IT as any change could have led to litigation and not sustainable under law. They further stated that the issue solely falls under the purview of the Ministry of Communications & IT as per Government of India (Transactions of Business Rules), 1961 and did not require any consultation in GoM/Cabinet for taking decisions and it was wrong to perceive that any matter which is placed before the Ministry of Law for taking legal advice and not accepted by the concerned Ministry, is to be placed before the GoM or the Cabinet. Moreover, the need for forming an EGoM arises when a new policy is being framed and in this particular issue, no new policy for grant of UASL was being framed.

The contention of the DoT is untenable as rejection of the advice of Hon'ble MLJ to have detailed deliberations on the issues in the EGoM on the ground that changes in policy might lead to litigation goes against the well established and time-tested procedure of functioning of the Government and the collective responsibility of the Union Cabinet. Ministry of Law and Justice is the nodal authority in the Government for providing legal opinion and to say that implementation of their advice/suggestion would lead to litigation appear to be showing lack of trust in the nodal department of the Government of India dealing with Law and Justice and is thus at best a questionable stand. A prudent decision would have been to go by the advice of Law Ministry on the issue of legal tenability and to discuss threadbare the various issues involved in issue of new licences at an inter ministerial forum.

Thus, the difference of opinion between the Hon'ble MOC &IT and the Hon'ble MLJ regarding referring the matter to an EGoM remained unresolved and the DoT went ahead with processing of large number of applications without deciding on the issue of legal tenability raised by them.

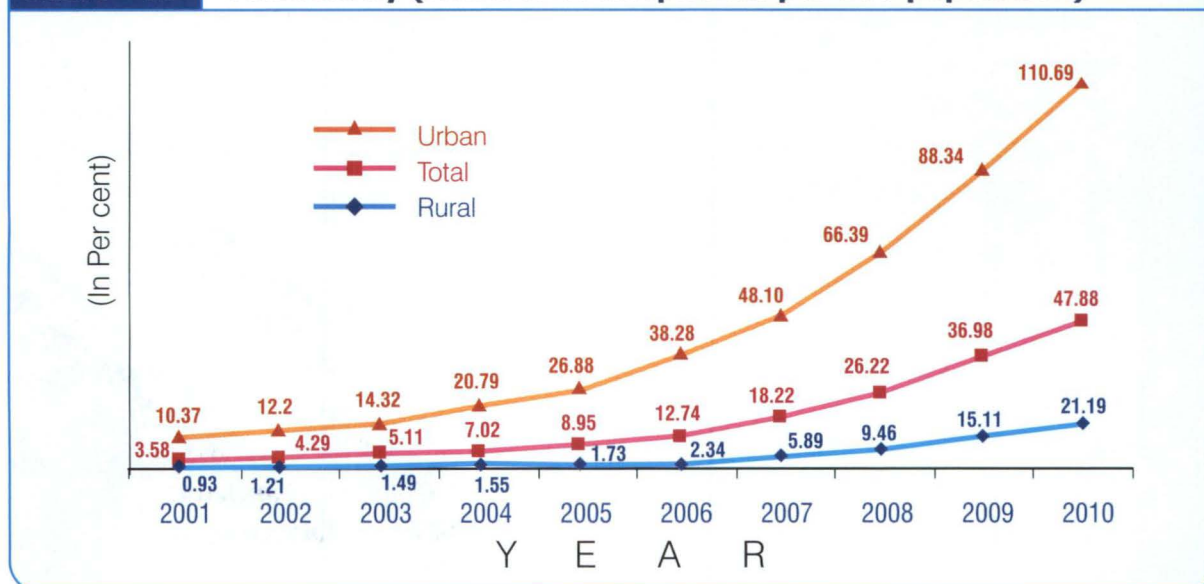
On 2 November 2007, Hon'ble Prime Minister wrote to Hon'ble MoC&IT that given the back drop of inadequate spectrum and large number of applications received for fresh licences, DoT should consider (i) introduction of a transparent methodology of auction, wherever legally and technically feasible and (ii) revision of entry fee, which is currently bench marked on an old figure. The Hon'ble MoC&IT, on the same day replied that *“the issue of auction of spectrum was considered by the TRAI and the Telecom Commission and was not recommended as the existing licence holders who are already having spectrum up to 10 MHz per Circle have got it without any spectrum charge. It will be unfair, discriminatory, arbitrary and capricious to auction spectrum to new applicants as it will not give them level playing field.*

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

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

It is to be noted that teledensity had already reached 18.22 per cent (2007) (as against a target of 15 by 2010, as envisaged in NTP-1999).

**Chart - 4.1** Teledensity (Number of telephones per 100 population)



The telecom sector had reached a phase where, greater consideration was required to be given to issues of efficient use of spectrum, reflecting its scarcity value in its pricing and recovery of additional cost to Government in making the spectrum available. A trade off between assigning more spectrum to an optimum number of operators per service area with a view to reduce their net-work cost and invite more competition by no capping, was required to be considered carefully before committing a substantial part of available spectrum. Further Hon'ble MoC&IT was incorrect to say that *the issue of auction of spectrum was considered by the Telecom Commission and was not recommended. As stated in the paragraph(4.2), the recommendations of the TRAI ( August 2007) was never discussed in a meeting of the full Telecom Commission between date of submission of the TRAI's recommendations and date of the Hon'ble MoC&IT letter i.e. 2 November 2007.*

*On the same day through another communication the Hon'ble MoC&IT informed the Hon'ble Prime minister that "the Department wanted to examine the possibility of any other procedure in addition to the current procedure of allotment of licences to process the huge number of applications. A few alternative procedures as debated in the Department and also opined by few legal experts were suggested by the Department of Telecom to Ministry of Law & Justice to examine its legal tenability to avoid future legal complications, if any. Ministry of Law and Justice, instead of examining the legal tenability of these alternative procedures suggested referring the matter to Empowered Group of Ministers. Since, generally new major policy decisions of a Department or inter-departmental issues are referred to GoM, and needless to say that the present issue related to procedures, the suggestion of Law Ministry is totally out of context. Now, the Department has decided to continue with the existing policy (first-come-first-served) for processing of applications received up to 25th September 2007, i.e. the date when the news-item on announcement of cut-off date appeared in the newspapers. The procedure for processing the remaining applications will be decided at a later date, if any spectrum is left available after processing the applications received up to 25th September 2007".*

- 4.4.1** Ignoring the advice of Law Ministry and the Hon'ble Prime Minister, Hon'ble MoC&IT therefore decided to go ahead with arbitrarily deciding that the cut off date for issue of LoI would be advanced to 25th September 2007 and the applications received would be decided on FCFS basis.

**BOX-3 Chronology of Events**

Date	Procedural Details
24/09/2007	Hon'ble MoC&IT conveyed through press release that no application under UAS will be accepted after 01/10/2007.
18/10/2007	Ministry accepted the Recommendations of TRAI. Lols were issued to the Reliance Communications Ltd and two others for dual technology.
19/10/2007	A Press release was issued stating that the TRAI's recommendations have been accepted by the DoT. Policy for the dual technology was also announced.
26/10/2007	Ministry of Law & Justice (MLJ) was requested to communicate the opinion of the Ld Attorney General of India/Solicitor General of India on the procedure to be followed.
1/11/2007	Opinion of the Hon'ble MLJ was received by DoT.
02/11/2007	DoT decided that only the applications received up to 25/09/2007 shall be processed which were 232 in number.
02/11/2007	Hon'ble PM wrote to Hon'ble MoC&IT to consider auctioning of spectrum and revision of entry fee in a fair and transparent manner.
02/11/2007	Hon'ble MoC&IT wrote to Hon'ble PM that sufficient 2G spectrum available to cater to the requirement of few new operators and more no. of operator will increase tele-density and bring down the tariff.
02/11/2007	Hon'ble MoC&IT again wrote to Hon'ble PM justifying the decision of amendment of cut off date and termed the suggestion of Ministry of Law and Justice for GOM as 'out of context'.
26/12/2007	Hon'ble MoC&IT again wrote to Hon'ble PM regarding the personal discussion with Hon'ble PM and External Affairs Minister on various issues including issue of dual technology and issue of new licences.
31/12/2007	Secretary DoT and Member (Finance) DoT retired.
03/01/2008	Hon'ble PM acknowledged the letter dated 26/12/2007 sent by Hon'ble MoC&IT.
09/01/2008	A meeting of full Telecom Commission was scheduled for 09.01.2008 to discuss issues of new licences and allocation of spectrum to existing as well as new players by auctions postponed to 15.01.2008.
10/01/2008	Decision regarding cut off date being 25/09/2007 was conveyed through a Press Release in the afternoon of 10 January 2008.
10/01/2008	Through a press release, companies who had submitted applications on or before 25 September 2007 were advised to depute their authorized representative at 3.30 PM on 10 January 2008 to collect response(s).
10/01/2008	Out of 232 applications received up to cut off date 121 Lols were issued to applicants found eligible.
10/01/2008	All applicants communicated their acceptance.78 applicants complied with terms and conditions including submission of entry fee, PBG and FBG.
11/01/2008	Remaining 43 applicants complied with terms and conditions.
25/01/2008	All UAS licenses were issued to be effective from 25 January 2008.



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

The action suggested that Hon'ble MoC&IT was not open to the idea of discussing and deliberating the issues involved at appropriate levels even when there was a high risk of huge revenue loss to the Government exchequer.

This is further corroborated by the fact that the date of the meeting of Telecom Commission which was scheduled to discuss the issues relating to issue of pending applications for licence and pricing of spectrum was postponed from 9 January 2008 to 15 January 2008. Without Telecom Commission getting an opportunity to discuss the matter, 121 Lols were issued on 10 January 2008. The Hon'ble Finance Minister also held the view (15 January 2008) that "Spectrum is a scarce resource. The price for spectrum should be based on its scarcity value and efficiency of usage and the most transparent method of allocating spectrum would be through auction". However, the Hon'ble Finance Minister after the issue of 121 LOIs by the DoT suggested in January 2008 to treat the previous issue of licences as a closed chapter and recommended that the price of spectrum be discovered through an auction process in future.

The Government had long been aware that spectrum was a scarce natural resource which needed to be priced appropriately so as to ensure its optimal utilisation. The entire chronology of events as detailed in the Box and the manner in which it was handled, if seen with the Hon'ble Finance Minister's proposal of January 2008, suggest that the DoT acted in haste while issuing new UAS licences at a price discovered 7 years back, which deprived it of an opportunity to discover the economic value of a scarce natural resource. The availability of the spectrum is limited and the Government has to incur huge expenditure for getting it

vacated from Defence authorities by providing alternate media to them.

MoF should have insisted for a Cabinet decision, in view of the following;

- Treating the authorisation allowed by the Cabinet in 2003 for calculation of entry fee for migration of existing operators (BSOs & CMSPs) to UASL regime based on the formula given by the TRAI (October 2003) as an open-ended one was a wrong interpretation of the DoT and particularly when Cabinet in the same decision had defined the role of MoF in the matter of spectrum pricing.
- Government of India (Transaction of Business) Rules 1961 provided for necessity of matter being placed before the Cabinet in case either involving financial implication on which the Minister of Finance desires or a difference of opinion arises between two or more Ministers

**Who all were not in favour of hasty allotment of licenses without revision of spectrum prices?**

**PRIME MINISTER**

**MINISTER OF LAW AND JUSTICE**

**FINANCE SECRETARY**

**SECRETARY, DoT**

**MEMBER (FINANCE)**

It was noted that on the issues of auction and allotment of 3G/BWA spectrum, MoF had quoted the above two grounds for participating in the consultative process with the DoT.

The DoT informed (July 2010) that there was no undue haste in the issue of LOIs since a decision to process applications for grant of UAS licence to those who applied up to 25.09.07 was taken on 2 November 2007 and reports were already appearing in newspapers about the cut off date. The DoT also stated that pricing of spectrum was not on the agenda of the Telecom Commission meeting which was scheduled for 15.01.2008. The reply of the DoT is not tenable as they went ahead with the process of allocation of UAS licenses without any deliberations either in the High Powered Telecom Commission or EGoM as suggested by the Hon'ble MLJ. The DoT also gave a confusing and misleading reply to the Finance Secretary to side track the valid issues raised by the Finance Secretary.

4.6

#### **Multiple Activities on 10 January 2008**

On 10 January 2008 afternoon, the DoT through the Press Information Bureau informed that all eligible applicants who applied for UAS licences up to 25 September 2007 would be issued Lols. It was also mentioned in the press release that the DoT has been implementing a policy of FCFS for the 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 Lol and then **who so ever, complies with the condition of Lols first will be granted UAS licence.**" This stipulation introduced for the first time by the DoT took away the relevance of the date of application and grossly violated the sanctity and transparency of the FCFS policy being followed hitherto by the DoT.

Audit found that in the draft press release, the DoT had proposed to maintain the inter-se seniority of applicants based on their date of applications, if more than one applicant complied with LOI conditions on the same day. However, the Hon'ble MoC&IT personally deleted this provision (Annexure I) from the press release observing that the proposal was **“not necessary as it is a new stipulation”** while at the same time conveniently forgetting that the basic stipulation **“who so ever, complies with the condition of Lols first will be granted UAS licence”** was also a new stipulation being added for the first time.

**4.6.1** Out of 232 applications received from 21 applicant Companies till the changed cut off date, 121 applications from 16 applicant Companies were found eligible. The DoT issued another press release on the **same day (2.45 p.m)** asking all applicants to assemble at the DoT Hqrs within forty five minutes (i.e. by **3.30 p.m**) to collect letters in response of their application. All the eligible applicants collected their Lols and acceptance of 120 applications was received on the same day. Compliance of terms and conditions of Lol was also made for 78 applications on the same day and the remaining on the following day. The change in the method for applying FCFS criteria from receipt of application to compliance of Lol made the applicants rush to comply with the Lol conditions within a few hours and in as less as an hour in respect of 24 service areas. (Annexure II). It would therefore be evident that though the DoT took 100-550 days to process the applications as against prescribed 30 days under its so-called FCFS policy, it gave not even an hour to the applicants to assemble at the DoT premises to collect LOIs and less than half a day to comply with the LOI conditions.

#### **4.6.2 13 Applicants submitted pre-dated demand drafts**

It was noticed that 13 applicants were even ready with Demand Drafts (DDs) drawn on dates prior to the notification of cut off date.(Annexure III) An applicant also submitted the Performance Bank Guarantee (PBG) and Financial Bank Guarantee (FPG) of the Punjab National Bank (Annexure IV) prepared on 10 January 2008 in Mumbai to Ministry on the same day. Evidently, these applicants, had advance information about the issue of this notification by the DoT which enabled them to take appropriate advance action to draw the DDs and prepare other relevant documents for complying with the Lol conditions in spite of the changed time limit for compliance from 15 days to about half a day.

#### **4.6.3 DOT's own “FCFS” Policy not followed**

Audit noted that though the DoT had decided to follow the policy of the first-come-first-served (FCFS) and the Hon'ble MOC&IT in his communication dated 2 November 2007 had informed the Hon'ble Prime Minister that the processing of applications was to be on FCFS basis, the DoT deviated from the FCFS policy in letter & spirit.

To start with, Hon'ble MoC&IT arbitrarily decided to issue Letter of Intents (Lols) simultaneously to all applicants, who had submitted their applications between March 2006 and 25 September 2007 thereby depriving the applicants, who had submitted their applications earlier, of their seniority and resultant claim to get the Lols first. **Thereafter the importance of date of submission of application in the FCFS Policy was altogether removed by giving precedence to the date of compliance to the Lols.** As a

result, applicants who had submitted the applications even a year later were given the chance of getting precedence over earlier applicants if they could comply with the Lols conditions earlier. The last nail in the coffin of transparency and objectivity of the FCFS policy was dealt by selectively leaking the date of issue of Lols to a few applicants as a result of which, they were ready with pre-dated demand drafts of thousands of crores of rupees prior to the date of issue of the Press release calling for applicants to collect the Lols from DoT.

**First-Come-First-Served (FCFS) was the principle internally adopted in DoT for allocation of spectrum which was extended to issue of new UAS licenses. Under the FCFS system all applications are received first in the Central Registry (CR) Section of DoT where date of receipt and serial numbers are posted on it. Priority/seniority of applications is determined based on this date of receipt in the CR section.**

Thus the entire process of allotment of UAS licenses in January 2008 lacked transparency and appeared to have been done with the objective of favouring a few firms over others. As a result thereof, Swan Telecom Pvt Ltd, which had submitted the application on 2 March 2007, was given the spectrum for the Delhi service area on 28 August 2008 itself while Spice Communications Ltd which had submitted their application in August 2006 has not yet been given (March 2010), spectrum for Delhi service area. Similarly, for Maharashtra service area also, Spice Communications Ltd (Date of application- 31 August 2006) got the spectrum in May 2009 while Unitech and Videocon got the spectrum much earlier in September 2008 itself though they had submitted their applications for UAS licenses more than a year later in September 2007. Idea Cellular Limited (Date of Applications- 26 June 2006) also got the spectrum in May 2009 while Unitech (date of Applications – 24 September 2007) got the spectrum in September 2008.

- 4.6.4** DoT, in response to the audit observation informed (July 2010) that the draft press release was changed because it was contrary to the policy of FCFS of the DoT and the DoT had not deviated from the declared policy. The contention of the DoT appeared to be untenable as in the FCFS system adopted by the DoT where determination of priority of applications was dependent on the date of its receipt in the Central Registry of the DoT, the date of compliance to LOI's conditions was of secondary importance and was to be considered only when an applicant company did not

comply with the Lol's conditions within stipulated period of 15 days. Amendment in the draft press release by the Hon'ble MoC&IT personally without any sound and valid reason took away the sanctity of the date of application and the date of compliance of Lol's conditions became the date of priority which was not the accepted principle for FCFS being followed by the DoT till then. It was for the first time in the history of the DoT that the date of compliance of Lol was considered as the criterion for the issue of UAS licence.

- 4.6.5 DoT, quoting extensively from a letter written by the Hon'ble MoC&IT to the Hon'ble Prime Minister, stated that the Hon'ble Prime Minister was apprised of all the decisions taken by the DoT and the letter was acknowledged by the Hon'ble Prime Minister.** The DoT also stated (July 2010) that shortage of spectrum for GSM services necessitated the need for limiting the number of licenses in the first phase and the cut off date was fixed to identify them. Explaining the reason for fixing 25 September 2007 as the cut off date it was replied that in the absence of the possibility of issuing licence and spectrum to all the applicants it was decided by the DoT that the most appropriate way to divide the applicants into two homogenous groups was to classify them on the basis of the date of requests i.e., applications received prior to date of publication of press release and new applications received after it and any other date for grant of Lol in the first phase would have been arbitrary. Further, neither the cut-off date was advanced nor the applications for grant of UAS licences had been rejected. The DoT also added that since the FCFS policy has been followed without interruption, no application beyond 25.09.07 was either prejudiced or aggrieved, adding that all eligible applicants who applied till 25.09.2007 knew that their applications were being processed by the department for grant of licence.
- 4.6.6** The response of the DoT is not tenable because if availability of spectrum was the criteria for deciding the number of licenses to be issued then fixing a cut off date for issue of LOIs had no relevance since the senior most applicants, depending on their date of application should have been the natural choice according to the FCFS followed by the DoT. The admission of the DoT that some of the applicants knew about the cut off date decided in the DoT, even before it was notified through a Press release on 10th January 2008, only confirms that the processing of applications lacked fairness and transparency.
- 4.6.7** The process followed for the allotment of UAS licenses in 2007-08 lacked transparency and objectivity and has eroded the credibility of the DoT. It has denied level playing field to the applicant companies. The frequent changes in FCFS criteria, simultaneous issue of Lols to all applicants on the same day and a large number of applicants complying with detailed requirements of Lol (for which 15 days are allowed as per procedure) within hours: all reflect a deliberate and unhealthy haste on part of the DoT in going ahead with the issue of licences which tended to favour applicants who could proactively anticipate such procedural changes well in time.

This unusual haste, in spite of repeated concerns expressed by different agencies and by the senior officers within the Ministry raises doubts regarding the intention of the Hon'ble MoC&IT, in going ahead with issue of licences in an arbitrary manner without letting the matter be debated or discussed and considered at appropriate levels. Thus the hasty actions taken by the DoT in the issue of new UAS licences and the failure of the Ministry of Finance in prevailing on the DoT led to 2G spectrum being doled out at a price discovered 7 years back.

#### How was the sanctity of DoT's own FCFS policy violated?

- Abrupt fixation of arbitrary cut off dates in September 2007 for the receipt of applications;
- Clubbing all applicants together and issuing Lols simultaneously;
- Change in the method for applying FCFS criteria from the date of receipt of application to date of compliance of Lols;
- Proposal to maintain the inter-se seniority of applicants based on their date of applications, if more than one applicant complied with Lol conditions on the same day was rejected;
- Leaking the information about date of issuing Lols to select applicants, thereby enabling them to keep Demand Drafts ready for payment of entry fee, FPG/PBG.

**First four decisions were taken by the Hon'ble MoC&IT himself.**

## 4.7

### Issue of UAS Licence to ineligible applicants

**4.7.1** The broad guidelines of the DoT (December 2005) details the eligibility conditions for grant of Unified Access Services Licence in a Service Area. Important eligibility conditions of the guidelines are

- The applicant must be an Indian company, registered under the Indian Companies Act'1956.
- The Company shall acknowledge compliance with the licence agreement as a part of Memorandum of Association of the Company. Any violation of the licence agreement shall automatically lead to the Company being unable to carry on its business in this regard. The duty to comply with the licence agreement shall also be made a part of Articles of Association.
- The applicant company shall have a minimum paid up equity capital of the amount as prescribed in the guidelines depending on the Service Area(s) they are applying for as on the date of the application and shall submit a certificate to this effect by the applicant's Company Secretary along with application.
- A promoter company/ legal person cannot have stakes in more than one Licensee Company for the same service area. No single company/ legal

person, either directly or through its associates, shall have substantial equity holding in more than one Licensee Company in the same service area for the Access Services namely; Basic, Cellular and Unified Access Service. 'Substantial Equity' was defined as equity of 10% or more.

- The applicant and promoters of the applicant company should have a combined net-worth of amount as prescribed in the guidelines depending on the service Area(s) they are applying for. The net-worth of only those promoters shall be counted, who have at least 10 % equity stake or more in the total equity of the company.
- In case the applicant is found to be not eligible for the grant of licence for Unified Access Service, the applicant shall be informed accordingly. Thereafter the applicant is permitted to file a fresh application if so desired.

Each applicant Company was required to provide inter alia following information/ documents for each service area separately:-

- Certified copy of Certificate of Registration along with Articles of Association and Memorandum of Understanding. (Company Secretary to certify the copy);
- Paid up capital as on the date of application (Certificate from Company Secretary certifying the paid up capital to be provided.);
- Details/para no. of Memorandum of Association of Company for compliance to Clause 5.G (iii) of guidelines dated 14.12.2005;
- Power of Attorney by Resolution of Board of Directors that the person signing the application is an authorized signatory.

The Applicant company was also required to give an undertaking to the effect that if the application was found to be incomplete in any respect and/or if found with conditional compliance, the same was to be summarily rejected. The applicant was also required to certify that if at any time, any averments made or information furnished for obtaining the licence was found incorrect, then his application and the licence if granted thereto on the basis of such application shall be cancelled.

Section-18(2) of the Companies Act, 1956 stipulates that a certificate of registration by the Registrar of Companies shall be conclusive evidence that all the requirements of the Act with respect to the alteration and the confirmation thereof has been complied with, and henceforth the memorandum so as altered shall be the Memorandum of the Company. Section 19(1) provides that no alternation will have any effect until it has been duly registered in accordance with the relevant provisions of the Act.

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

#### **4.7.3 Misrepresentation of facts by the nine real estate companies**

Six newly incorporated applicant companies\* belonging to **Unitech Group (Brand name Uninor)** had submitted their applications for grant of UAS licenses for 20 service areas to the DoT on 24 September 2007. Along with their applications, these companies had submitted copies of their Memorandum of Association/ Articles of Association (MOA/AOA) indicating the main object clause of Telecom Sector thereby claiming to meet the eligibility criterion for the grant of UAS licence.

On verification, it was revealed that all these companies had suppressed the fact of conditional nature of certification of registration done by the Registrar of Companies (ROC) on 20 September 2007 while registering the alterations in the main object clause in the MOA/AOA of these Companies. The ROC while certifying the alteration of the main object clauses of all six companies had stated that the **certificate was subject to the change of name of the Company**. Since in terms of Section 21 of the Companies Act 1956, the change of name of the Company could be done only with the approval of the “Central Government signified in writing”, the condition of the change of name of these applicant Companies was met in May 2008 only. As a result, all these six new companies were registered afresh with the new names in May 2008 by the ROC. Hence the alteration of the MOA of these Companies became effective in May 2008 only. As a result thereof, the MOA of these companies did not permit them to operate in the telecom sector on the date of application i.e. 24 September 2007. Hence, they were ineligible for the grant of UAS licenses.

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

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\* Unitech Builders & Estates Pvt. Ltd, Hudson Properties Pvt. Ltd, Nahan Properties Pvt. Ltd, Aska Projects Ltd, Volga Properties Pvt. Ltd, Adonis Projects Pvt. Ltd



**4.7.3.1 Azare Properties Limited and Unitech Infrastructures Private Limited (Brand name Uninor)** also misrepresented the altered MOA/AOA as the original MOA/AOA along with their applications to the DoT. Further they suppressed the fact that alterations had not been registered by the ROC as yet on the date of submission of their application. The ROC while certifying the alteration of the main object clauses in the MOA/AOA of these companies on 9th and 5th October 2007 respectively had also directed that the **certificate was subject to the change of name of the Company**. The directive of the ROC was complied with only in May 2008 and thus the alteration of the MOA of these Companies became effective in May 2008 only. As a result thereof, the MOA of these companies did not permit them to operate in the telecom sector on the date of application i.e. 24 September 2007. Hence, they were also ineligible for the grant of UAS licenses.

Further, the submission of the altered MOA/AOA of the Companies as the original MOA/AOA along with their applications to the DoT without full disclosure of the alteration of the main object clause in the MOA/AOA and their non registration by the ROC was of the nature of a fraudulent act of these two companies for obtaining the UAS licenses for 2 service areas by misleading the DOT.

**4.7.3.2 Allianz Infratech Private Limited (Merged with Etisalat DB Telecom Private Limited)**, in their applications to the DoT on 5 September 2007 submitted the MOA/AOA of the company, which didn't include the telecom sector in their main object clause. Hence the application should have been rejected forthwith. Even the alteration in the main object clause of the MOA of the Company was certified by the ROC on 26 October 2007 only. Thus they were also not eligible for grant of UAS licence on the date of submission of their application in September 2007.

**4.7.3.3 Computer Software Company also misrepresented facts**

**Shipping Stop Dot Com (India) Private Limited** (later on changed to **Loop Telecom Private Limited**) also submitted their applications for grant of UAS licenses for 21 service areas on 3 September 2007 to the DoT without disclosing the fact of non registration of alteration of the main object clauses in the MOA/AOA with the ROC as on the date of the application. The company had changed the main object clauses in their MOA/AOA so as to include the telecom sector in their MOA/AOA but these alterations were registered by the ROC on 28 September 2007 only. Thus they were also not eligible for grant of UAS licence on the date of submission of their application in September 2007.

Further, the submission of the altered MOA of the Company by the Loop Telecom Private Limited suppressing the fact of non registration of the alterations in the main object clause of their MOA/AOA by the ROC on the date of application was also in the nature of a fraudulent act with the intention of fulfilling the eligibility criterion prescribed for UAS licenses.

#### 4.7.4 False and fictitious claims of higher Paid up Capital by 13 Companies

Paid up capital of the applying Company was one of the important conditions prescribed for obtaining a UAS Licence. The broad guidelines of the DoT (December 2005) prescribe that the applicant company shall have a minimum paid up equity capital of ₹ 3-10 crore depending on the Service Area(s) (Service Areas A- ₹ 10 crore, B- ₹ 5 crore and C - ₹ 3 crore) as on the date of the application and shall submit a certificate to this effect by the applicant's Company Secretary along with application.

Further the Companies Act 1956 prescribes the procedure to be followed for increase in the authorised share capital of a company. Only after authorised share capital is increased and registered with ROC, the procedure for increasing the Paid up capital could be undertaken by a registered Company.

##### 4.7.4.1 13 Companies did not have the requisite Paid up Capital

13 Applicant Companies, which had applied for 123 UAS licenses and were granted 85 UAS licenses, did not have the requisite authorised share capital on the date of submission of the applications. Hence the question of their meeting the eligibility criterion of the Paid up capital as on the date of application did not arise. Of these, **eight applicants\*** belonging to **Unitech Group (Brand name Uninor)** had been incorporated in August-September 2007 with an authorised share capital of ₹ 5 lakh each. All these eight companies passed the special resolutions for increase in the authorised share capital between 2 PM to 5 PM on 20 September 2007 in the extra-ordinary general meetings of the respective companies and deposited the requisite stamp duties **on 3 October 2007** for increase in the authorised share capital. After they submitted the requisite applications along with the proof of payment of stamp duties on 5 October 2007, the certificate of the registration of the increase in the authorised share capital was issued by the ROC only on 8/11 October 2007. Thus the claim of the higher paid up capital of these companies on the date of submission i.e. 24 September and the supporting certificates of the company secretaries of these companies submitted along with their applications was false and fictitious.

**4.7.4.2** Another Company **Allianz Infratech Private Limited**, in their applications to the DoT on 5 September 2007 claimed the paid up capital of ₹ 10 crore as on the date of application.

Scrutiny of records by Audit revealed that the paid up share capital of this company as on the date of application was ₹ 5 lakh only. Though they claimed that they had increased the authorised share capital to ₹ 10 crore through the special resolution on 1 September 2007 in the extra-ordinary general meetings of the company, verification of the records revealed that they deposited the requisite

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\* Unitech Infrastructure Pvt. Ltd., Unitech Builders & Estates Pvt. Ltd., Azare Properties Ltd, Hudson Properties Pvt. Ltd., Nahan Properties Pvt. Ltd., Aska Projects Ltd, Volga Properties Pvt. Ltd., Adonis Projects Pvt. Ltd.

stamp duties (Annexure V) for enhancement in the authorised share capital on 24 December 2007 and Form No 5 along with other papers with the ROC on 27 December 2007 only for registration of increase in the authorised share capital of the company. They also violated the provisions of the Section 18 (1) of the Companies Act which provides that a certified copy of the order confirming the alterations in the MOA/AOA shall be filed by the Company within three months from the date of the resolution with the ROC. Hence their claim of the paid up capital of ₹ 10 crore as on 5 September 2007 was false, fictitious and without any basis.

**4.7.4.3 Shipping Stop Dot Com (India) Private Limited** (later on changed to **Loop Telecom Private Limited**) also made a patently false claim of the paid up capital of ₹ 130.65 crore through their company secretary V V Chakradeo & Deo while submitting their applications for grant of UAS licenses for 21 service areas on 3 September 2007 to the DoT. Audit found that the Company had deposited the statutory stamp duties of ₹ 18.87 lakh for increase in the authorised share capital from ₹ 5.20 Crore to ₹ 131 crore on 25 September 2007 and submitted the form 5 along with the proof of payment of stamp duty on 24 October 2007 to the ROC Delhi for registering the increase in the authorised share capital to ₹ 131 crore. The question regarding any increase in the paid up capital beyond ₹ 5.20 crore could therefore arise on or after 24 October 2007 only. Thus the certificate given by the Company for the claim of the paid up capital of ₹ 130.65 crore through their company secretary V V Chakradeo & Deo at the time of submission of application for UAS licence was a fictitious document submitted to the DoT with a malafide intention to secure the UAS licence.

**4.7.4.4 Datacom Solutions Private Limited** (later changed to **Videocon Telecommunications Limited**) while submitting their application for the grant of 22 UAS licenses on 28 August 2007 made a false claim of the paid up capital of ₹ 150 crore through their company secretary although the MOA and AOA attached with the applications indicated that the authorised share capital of the company as ₹ 1.00 lakh only. Since the requirement of the requisite amount of the paid up capital was an important eligibility criterion, their applications ought to have been rejected forthwith. However, on 27 November 2007, the company suo-motto submitted a so-called “correct” version of MOA/AOA as on 28 August 2007 stating that they had submitted an old version of MOA/AOA inadvertently along with the application. The new version of MOA/AOA claimed to have increased the authorised share capital from ₹ 1.00 lakh to ₹ 150 crore through an ordinary resolution passed in the extra-ordinary general meeting on 27 August 2007 i.e. the day preceding the date of submission of applications by the Company.

Since there is a procedure prescribed in the Companies Act for effecting increase in the authorised share capital of a company, the Company could under no circumstances have a paid up capital of ₹ 150 crore on 28 August 2007 and hence

the certificate furnished by the Company Secretary of the Company appeared to be false. The DoT failed miserably to do any due diligence in the examination of claims of the company even when the Company claimed to have passed the resolution enhancing the authorised share capital on the preceding day of the date of application of the applicant company.

**4.7.4.5 S Tel Private Limited**, a company incorporated on 19 June 2007 with an authorised share capital of ₹ 10 lakh, applied for 6 UAS licenses on 7 July 2007 claiming the paid up capital of ₹ 18 crore on the basis of increase in the authorised share capital through a special resolution in the extra ordinary general meeting on 2 July 2007. Audit found that the company submitted the request to the ROC for registering the resolution only on 3 August 2007. Hence the question of the paid capital of ₹ 18 crore on the date of application did not arise when the ROC had not even registered the special resolution approving the increase in the authorised share capital as of 3 August 2007. Thus S Tel was ineligible to get the 6 UAS licenses from DOT.

### Major Deficiencies in the Applications of UAS Licensees

Sr. No.	Name of Applicant Company/Changed name	Date of Incorporation of the Company	Date of application	No. of licenses issued	Major shortcomings observed
1.	Unitech Infrastructure Pvt. Ltd. ( Brand name Uninor)	10 August 2007	24.09.2007	1	<ul style="list-style-type: none"> <li>■ The business activity in the main object clause of MOA was real estate instead of telecom as the resolution effecting the alteration was not yet registered as on the date of application;</li> <li>■ Suppressed the non - registration of alteration in the main object clause of MOA by ROC;</li> <li>■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 10 crore;</li> <li>■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007;</li> <li>■ Registration of the resolution effecting the increase in the authorised share capital was done on 11 October 2007;</li> <li>■ Submitted false certificate from Company Secretary in respect of Paid up capital;</li> </ul>
2.	Unitech Builders & Estates Pvt. Ltd. (Brand name Uninor)	10 August 2007	24.09.2007	1	<ul style="list-style-type: none"> <li>■ The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met;</li> <li>■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC;</li> </ul>

## Major Deficiencies in the Applications of UAS Licensees

Sr. No.	Name of Applicant Company/Changed name	Date of Incorporation of the Company	Date of application	No. of licenses issued	Major shortcomings observed
					<ul style="list-style-type: none"> <li>■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 10 crore;</li> <li>■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007;</li> <li>■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007;</li> <li>■ Submitted false certificate from Company Secretary in respect of Paid up capital;</li> </ul>
3.	Azare Properties Ltd (Brand name Uninor)	1 August 2007	24.09.2007	1	<ul style="list-style-type: none"> <li>■ The business activity in the main object clause of MOA was real estate instead of telecom as the resolution effecting the alteration was not yet registered as on the date of application;</li> <li>■ Suppressed the non - registration of alteration in the main object clause of MOA;</li> <li>■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 10 crore;</li> <li>■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007;</li> <li>■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007;</li> <li>■ Submitted false certificate from Company Secretary in respect of Paid up capital ;</li> </ul>
4.	Hudson Properties Pvt. Ltd. ( Brand name Uninor)	1 August 2007	24.09.2007	1	<ul style="list-style-type: none"> <li>■ The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met;</li> <li>■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC;</li> <li>■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 10 crore;</li> <li>■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007;</li> </ul>

## Major Deficiencies in the Applications of UAS Licensees

Sr. No.	Name of Applicant Company/Changed name	Date of Incorporation of the Company	Date of application	No. of licenses issued	Major shortcomings observed
					<ul style="list-style-type: none"> <li>■ Registration of resolution effecting increase in the authorised share capital was done on 8 October 2007;</li> <li>■ Submitted false certificate from Company Secretary in respect of Paid up capital ;</li> </ul>
5.	Nahan Properties Pvt. Ltd. (Brand name Uninor)	16 August 2007	24.09.2007	6	<ul style="list-style-type: none"> <li>■ The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met;</li> <li>■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC;</li> <li>■ Authorised share capital was only ₹ 5 lakh against ₹ 22 crore;</li> <li>■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007;</li> <li>■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007;</li> <li>■ Submitted false certificate from Company Secretary in respect of Paid up capital;</li> </ul>
6.	Adonis Projects Pvt. Ltd. (Brand name Uninor)	28 August 2007	24.09.2007	6	<ul style="list-style-type: none"> <li>■ The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met;</li> <li>■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC;</li> <li>■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 26 crore;</li> <li>■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007;</li> <li>■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007;</li> <li>■ Submitted false certificate from Company Secretary in respect of Paid up capital;</li> </ul>

## Major Deficiencies in the Applications of UAS Licensees

Sr. No.	Name of Applicant Company/Changed name	Date of Incorporation of the Company	Date of application	No. of licenses issued	Major shortcomings observed
7.	Aska Projects Ltd. (Brand name Uninor)	16 August 2007	24.09.2007	3	<ul style="list-style-type: none"> <li>■ The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met;</li> <li>■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC;</li> <li>■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 25 crore;</li> <li>■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007;</li> <li>■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007;</li> <li>■ Submitted false certificate from Company Secretary in respect of Paid up capital ;</li> </ul>
8.	Volga Properties Pvt. Ltd. (Brand name Uninor)	1 September 2007	24.09.2007	3	<ul style="list-style-type: none"> <li>■ The business activity in the main object clause of MOA was real estate instead of telecom as the condition prescribed by ROC while doing the registration of resolution was not yet met;</li> <li>■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC;</li> <li>■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 25 crore;</li> <li>■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007;</li> <li>■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007</li> <li>■ Submitted false certificate from Company Secretary in respect of Paid up capital</li> </ul>

## Major Deficiencies in the Applications of UAS Licensees

Sr. No.	Name of Applicant Company/Changed name	Date of Incorporation of the Company	Date of application	No. of licenses issued	Major shortcomings observed
9.	Shipping Stop Dot Com (India) Private Limited ( Now Loop Telecom Pvt. Ltd)	12 March 1997	03/09/2007	21	<ul style="list-style-type: none"> <li>■ The business activity in the main object clause of MOA was to design, develop, sell, maintain computer software and programmes as the resolution effecting the alteration was not yet registered as on the date of application;</li> <li>■ The resolution effecting the alterations in main object clause of the MOA to include the telecom sector was registered by the ROC on 28 September 2007 only;</li> <li>■ Suppressed the non - registration of alteration in the main object clause of MOA by ROC;</li> <li>■ Authorised share capital was only ₹ 5.20 crore against the requirement of ₹ 128 crore;</li> <li>■ Deposited the stamp duties for increase in the authorised share capital on 25 Sept. 2007;</li> <li>■ Request for Registration of increase in the authorised share capital was submitted on 24 October 2007;</li> <li>■ Submitted false certificate from Company Secretary re. Paid up capital ;</li> </ul>
10.	Allianz Infratech (P) Ltd. (merged with Etisalat DB)	21 December 2006	5/09/2007	2	<ul style="list-style-type: none"> <li>■ The business activity in the main object clause of MOA was real estate instead of telecom as the resolution effecting the alteration was not yet registered as on the date of application;</li> <li>■ Suppressed the non - registration of alteration in the main object clause of MOA by ROC;</li> <li>■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 8 crore;</li> <li>■ Deposited the stamp duties for increase in the authorised share capital on 24 December 2007;</li> <li>■ Form No 5 along with other papers to increase the authorised share capital was submitted in ROC on 27 December 2007</li> <li>■ Submitted false certificate from Company Secretary re. Paid up capital ;</li> </ul>



## Major Deficiencies in the Applications of UAS Licensees

Sr. No.	Name of Applicant Company/Changed name	Date of Incorporation of the Company	Date of application	No. of licenses issued	Major shortcomings observed
11.	Datacom Solutions Pvt. Ltd. (Changed to Videocon Telecommunications Ltd.)	7 June 2007	28/08/2007	21	<ul style="list-style-type: none"> <li>■ Suppressed the non - registration of the resolution effecting alteration in the MOA effecting increase in the authorised share capital by ROC;</li> <li>■ Authorised share capital was only ₹ 1 lakh against the requirement of ₹ 138 crore;</li> <li>■ Increased authorised share capital on the day preceding the date of submission of application through a resolution;</li> <li>■ Submitted false certificate re. Paid up capital, though the resolution effecting the increase in the authorised share capital and alterations in the MOA/AOA was not yet registered by ROC;</li> </ul>
12.	S Tel Ltd.	19 June 2007	07/07/2007	6	<ul style="list-style-type: none"> <li>■ Suppressed the non - registration of alteration in the MOA/AOA regarding increase in the authorised share capital</li> <li>■ Authorised share capital was only ₹ 10 lakh against the requirement of ₹ 18 crore as on the date of application;</li> <li>■ Submitted the form for Registration of the resolution effecting the increase in the authorised share capital on 3 August 2007;</li> <li>■ Submitted false certificate from Company Secretary re. Paid up capital though the resolution effecting the increase in the authorised share capital and alterations in the MOA/AOA was not yet registered by ROC;</li> </ul>
13.	Swan Telecom Private Limited (Now Etisalat DB Telecom Private Limited)	13 July 2006	02/03/2007	13	<ul style="list-style-type: none"> <li>■ Suppressed the non - registration of alteration in the MOA/AOA regarding increase in the authorised share capital done on the preceding day i.e. 1 March 2007;</li> <li>■ Deposited the stamp duties and Form 5 to ROC Mumbai for registering the resolution effecting the increase in the authorised share capital on 14 March 2007;</li> <li>■ Submitted false certificate from Company Secretary re. Paid up capital;</li> </ul>

### Major Deficiencies in the Applications of UAS Licensees

Sr. No.	Name of Applicant Company/Changed name	Date of Incorporation of the Company	Date of application	No. of licenses issued	Major shortcomings observed
					<ul style="list-style-type: none"> <li>Net worth of ₹ 314.7 crore claimed on behalf of Reliance Telecom Ltd, whose share was claimed to be less than 10%, was not to be included while computing the net-worth of the applicant company.</li> </ul>

It would thus appear that the DoT miserably failed to do the necessary due diligence in the examination of the applications of these applicants though they took more than 3-9 months to process these applications as against the prescribed period of 30 days.

**4.7.4.6 Swan Telecom Private Limited (changed to Etisalat DB Telecom Private Limited)** applied for grant of UAS licence in 13 service area in March 2007. In compliance to substantial equity clause the applicant declared the following equity structure:-

#### BOX-4

Sl No.	Name of the Shareholder	No. of Equity share @ ₹ 10 per share	No. of Performance share @ 1 per share	Value of share (in ₹)	% of Total share holding
1	Tiger Traders Pvt. Ltd.	98219000	–	98,21,90,000	89.29%
2	Reliance Telecom Limited	10791000	–	10,79,10,000	9.81%
3	Reliance Telecom Limited	–	9920000*	99,20,000	0.90%
<b>TOTAL</b>				<b>110,0020,000</b>	<b>100%</b>

(Audit Finding: \*8% non-cumulative redeemable preference shares (NCRPS) of ₹ 1 each at a premium of ₹ 999. Thus each preference share was at the value of ₹ 1000. The total equity/ stakes of RTL in the Swan Telecom was of ₹ 992 cr +10.7910 cr = ₹ 1002.7930 crore as against equity holding of ₹ 98.2190 crore by the majority share-holder-Tiger Traders Private Ltd.)

From the above declaration of the Company for UAS licence, it was evident that at the time of applying for UASL, the equity stakes of Reliance Telecom Ltd in Swan Telecom Private Limited was 10.71%. Since Reliance Telecom Ltd were operating in all the service areas for which Swan Telecom Limited had applied for UASL, the application of Swan Telecom Private Limited was not in conformity with the UASL Guidelines, and hence was not eligible to be considered. The DoT did not have any mechanism to verify the correctness of the share holding pattern of the applicant and hence the matter should have been referred to the Ministry of Corporate Affairs (MoCA) as was advised by the Finance Wing of the Department. No reference,

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

As Swan Telecom did not meet the eligibility criteria on the date of application, its application should have been rejected by the DoT and the company should have been directed to apply afresh. Even if it was to be considered eligible on the basis of its old application, the date of priority based on FCFS basis should have been revised from March 2007 to December 2007 in order to ensure fairness. Had it been so, the company would have been out of the race as the department processed only those applications which were received up to 25.09.2007.

**4.7.4.6.1** DoT stated (July 2010) that at the time of applications the equity of Reliance Telecom was 9.81 per cent which was well within the prescribed limit of 10 per cent. Further, the DoT quoted Section 85 explanation (2) of Companies Act, 1956 which says that “equity share capital means all capital which is not preferential share capital”, to justify the decision to grant UASL to Swan Telecom. The DoT further stated that in the opinion of the Ld. Solicitor General “whether the application as originally filed was in order or not was the subject matter of divergent opinions and a view had already been taken that if regard be given to the equity share capital in the company, the application could not be said to be in violation of clause 8”. In view of these clarifications, there was no favouritism in the grant of UASL to Swan Telecom Pvt. Ltd.

**4.7.4.6.2** The reply of the DoT appears to be evasive. The issues involved were financial in nature. It would have been prudent if the DoT would have sought the opinion of the MoF or MoCA on “Financial or Corporate matter” rather than from Solicitor General. On verification, it was found that if the stake of RTL was considered less than 10%, then the application of Swan Telecom would have been liable to be rejected on the grounds of non-fulfillment of the requirement of the net-worth as the Swan Telecom had claimed the net-worth of the applicant company only on the strength of the RTL (₹ 314.7 crore ) with the contribution of the major shareholder ( Tigers Traders Private Limited) being ₹ 1 lakh in their application on 2 March 2007 (Annexure VI). Audit further found that the basic claim of the paid up capital of ₹ 110 crore by Swan Telecom Private Limited itself was false as the authorised share capital of the company as on the date of application i.e. 2 March 2007 was ₹ 4 crore only. The company had passed a special resolution on the preceding day i.e. 1 March 2007 to increase the authorised share capital from ₹ 4 crore to ₹ 125 crore but deposited the statutory stamp duties and submitted the Form 5 to the ROC, Mumbai on 14 March 2007 only (Annexure V) for registration of the increase in the authorised share capital of the company. Only after the registration of the resolution of the Company by the ROC, the increase in the

authorised share capital would have come into effect. The question of the increase in the paid up capital would have arisen thereafter only. Thus the paid up capital of Swan Telecom Pvt. Ltd. was ₹4 crore on the date of application i.e. 2 March 2007 and hence they were ineligible on both account i.e. non-fulfillment of the requirement of the net worth as well as paid up capital for grant of UAS licenses for 13 service areas on the date of application if the reply of the DoT is accepted.

***Audit also found that the email ID of the corporate as well as registered office of the Swan Telecom Private Limited in their application dated 2 March 2007 was shown as hari.nair@relianceada.com. The same email ID (hari.nair@relianceada.com) also was given for the correspondence address and the authorised contact person of the applicant company. Though the Company Secretary Hari Nair had given a certificate(Annexure-VII) while applying for a UAS licence for J&K Service Area in January 2007 that the Tigers Traders Private Limited held the shares of Swan (then Swan Capital private Limited) as trustees of Indian Telecom Infrastructure fund and these corporate beneficiaries are not part of Reliance ADA Group and neither Shri Anil Ambani nor his family or Reliance ADA Group companies holds any shares in these companies, holding of NCRPS of ₹1 at a premium of ₹999 by the RTL in Swan Telecom, a newly incorporated company with no fixed assets (The total equity/ stakes of RTL in the Swan Telecom was of ₹1002.79 crore as against equity holding of ₹98.22 crore by the majority share-holder-Tiger Traders Private Ltd.) raises doubts about the intention of the RTL and the control it would exercise in a new company incorporated barely few months ago. Hence the application of such company to enter telecom sector goes against the intent and spirit behind the UAS guidelines, which state that "A promoter company/ legal person cannot have stakes in more than one Licensee Company for the same service area. No single company/ legal person, either directly or through its associates, shall have substantial equity holding in more than one Licensee Company in the same service area for the Access Services namely; Basic, Cellular and Unified Access Service. 'Substantial Equity' was defined as equity of 10% or more." Thus it would therefore appear that Swan Telecom Private Limited while applying for the UAS licenses in 13 Service Areas was acting as a front company on the behalf of RTL and their application was in effect against the intent and spirit of the UAS licensing guidelines.***

To conclude, 85 licenses were issued to the Companies which suppressed facts, disclosed incomplete information and submitted fictitious documents to the DoT and thus used fraudulent means for getting UAS licenses and thereby access to spectrum. Owners of these licenses, obtained at unbelievably low price, have in turn sold significant stakes in their companies to the Indian/foreign companies at high premium within a short period of time. The premium earned by these new entrants to the telecom sector was nothing but the true value of the spectrum, which should have normally accrued to the public exchequer. The DoT, on its part failed to exercise due diligence in the processing of UASL applications and ensuring effective verification of the documents submitted by these applicants which

reflected inadequacy in the verifications procedures that were put in place. Since these Companies did not meet the eligibility criteria set by the DoT on the date of their application, their applications should have been rejected and they should have been asked to apply afresh as stipulated in the UASL guidelines.

The DoT, when pointed out the above, informed that based on the audit observation, issue of show cause notices for termination of the UAS Licenses to all the erring companies was being contemplated.

#### 4.8

### Access to dual technology

In November 2003, based on Cabinet decision, the DoT had issued guidelines for UAS licence which stipulated that ***“the service providers migrating to Unified Access Services Licence will continue to provide wireless services in already allocated/contracted spectrum and no additional spectrum will be allotted under the migration process for Unified Access Services Licence”***.

In April 2007, the DoT requested TRAI to furnish their recommendations on permitting “service providers to offer access services using combination of technologies (CDMA, GSM and/or any other) under the same licence”. TRAI's recommendations on the issue were received along with other recommendations in August 2007.

As per these recommendations, “A licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternative technology or which would be paid by a new licensee going to use that technology”. 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 DoT for the existing licensee.

#### 4.8.1 Undue benefits to Reliance Communications Limited

Four Companies Reliance Communications Ltd., Tata Teleservices, Shyam Telelink Ltd. and HFCL Infotel Ltd. were providing CDMA based mobile service under UAS licence. Three Companies (Reliance Communications Ltd for 20 Service Areas, Shyam Telelink Ltd for Rajasthan Service Area and HFCL Infotel Ltd. for Punjab Service Area) had applied for permission for using GSM technology in 2006. Since the combination of technologies (CDMA, GSM and/or any other) under the same licence was not permitted, DoT had not acceded to their request till April 2007. Based on the recommendations of TRAI, the decision for use of alternate technology was taken for the first time by the DoT on 17 October 2007. This decision, however, was taken without referring the matter to the full Telecom Commission even when it involved allocation of spectrum in 2007 at the 2001 price.

DoT issued a Press release in this regard on 19 October 2007. However, before announcing the acceptance of the recommendations of the TRAI in this regard, 'in-principle' approval for using GSM technology ( dual/alternate technology) was given, on 18 October 2007 itself (a day before the press release) to the three operators who had, sought for facility for using alternate technology in 2006 when it had not even been contemplated. The undue haste shown in issuing in-principle' approval for using GSM technology to Reliance Communication (20 service areas), Shyam Telelink Ltd. (1 service area) and HFCL Infotel Ltd (1 service area) was not evident afterwards as when the Tata Teleservices Ltd applied for dual technology immediately after the issue of the Press notification on 19 October 2007, LOI was not issued to them till January 2008. Further, other applicants\* were still waiting for similar licence for over two and half years as of now.

Reliance Communication Ltd. had complied with the requirements for permission to use dual technology on 19 October 2007 itself by depositing the non refundable entry fee of ₹ 1645 crore for 20 service areas through their sister concern Reliance Infocomm Ltd. Acceptance of bank drafts for ₹ 1645 crore by the orders of Reliance Infocomm Ltd (third party) on behalf of Reliance Communications Ltd was also not in order and shows the hurry through which entry fee was deposited. As a result, Reliance Communications Ltd. could acquire the right for allocation of 2G spectrum in 20 service areas on the day the policy itself was announced.

- 4.8.2.** By taking the priority date of Reliance Communications Ltd. as the date on which they had moved application for use of alternate technology (when it was not even formulated and permitted) i.e. 2006, they were allocated start-up spectrum on 10 and 11 January 2008 in 14 service areas (the operator withdrew request for 6 service areas where they were already providing GSM services) ahead of other operators who had applied for new UAS licences and whose applications were kept pending on the grounds of non-availability of spectrum. Spectrum under dual technology was allotted to HFCL Infotel Ltd. in Punjab only in September 2008 and Shyam Telelink Ltd. in Rajasthan in December 2008 though these companies also applied for spectrum under dual technology along with Reliance Communications Limited in 2006. In Delhi service area, Reliance was allocated GSM spectrum in January 2008 while Datacom Solutions Pvt. Ltd, Unitech Wireless Ltd, Spice Communications Ltd, Loop Telecom Pvt. Ltd. and Tata Teleservices Ltd. were not allocated GSM spectrum till September 2010.

Thus the process followed by the DoT while introducing access to the dual technology to the existing telecom operators in India lacked transparency and fairness. Equal opportunity was denied to other similarly placed operators who could apply for use of dual technology, only after the formal announcement of the policy.

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\* 1. Tata Teleservices 2. Sistema Shyam Teleservices 3. Etisalat DB Telecom Pvt. Limited

### 4.8.3 Violation of 2003 Cabinet decision to allow additional spectrum at 2001 prices

Deviation from a Cabinet decision should normally be with the approval of Cabinet. However, in the present case, such a crucial decision to permit service providers to offer access services using combination of technologies (CDMA, GSM and/or any other) under the same licence **with dual spectrum allocation** was taken without the matter being referred to Cabinet.

## 4.9 Undue advantage to Swan Telecom Pvt. Ltd in the allocation of spectrum

It was noted that the priority list was adjusted in Punjab, and Maharashtra service areas to give undue advantage to Swan Telecom Pvt. Ltd in allocation of spectrum. In Punjab service area, 15 MHz GSM spectrum was available in September 2008 which was sufficient to meet the demand of only first three applicants in the priority list i.e. HFCL, Idea Cellular Ltd and Unitech Wireless Pvt. Ltd. The request of Idea Cellular Ltd who was at the second place in the priority list was, however, not considered on the grounds of its proposed merger with Spice Communications Ltd who were offering service in Punjab service area. By keeping out Idea Cellular Ltd from the priority list, spectrum was allocated to Swan Telecom Pvt. Ltd who was at the 4th position on the priority list. In identical situation in Maharashtra service area, Spice Communications Ltd was not allocated start-up spectrum citing its proposed merger with Idea Cellular Ltd. Here too, the resultant beneficiary was Swan Telecom Pvt. Ltd.

4.9.1. As per DoT guidelines on merger of licenses in a service area, the post merger licensee shall be entitled to the total amount of spectrum held by the merging licensees, subject to the condition that after merger, licensee shall meet, within a period of 3 months from the date of approval of merger by the licensor, the prevailing spectrum allocation criterion. Hence, non allotment of spectrum to Idea Cellular Ltd and Spice Communications Ltd on the grounds of merger was against the DoT guidelines on the issue. Flouting the rules on both occasions by the DoT benefited Swan Telecom Pvt. Ltd.

4.9.2 The DoT in response to the above observation (July 2010) informed that as the merger proposal of Idea and Spice were under process, their request for initial spectrum was not processed and kept reserved for them as per their priority of spectrum application. Since their formal merger did not complete after several months, the above operators were allotted initial spectrum which was kept reserved for them. The response of the DoT ignores the fact that as per the data on spectrum availability as on September 2008, the demand for only 3 operators could be fulfilled in the order of their priority of application. Also, as per the priority list the application of Swan Telecom Ltd was in the fourth position. Hence the allotment of spectrum to Swan Telecom Ltd ahead of other companies was not as per the approved principle of FCFS.

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

Name	Amount of additional spectrum (MHz)	No. of Circles
Aircel	3.6	1
Bharti	32.4	13
BPL (Mumbai)	3.8	1
BSNL	61.6	19
IDEA	12.6	6
MTNL (Delhi & Mumbai)	12.4	2
Reliance	1.8	1
Spice (Punjab)	1.6	1
Vodafone	19.6	7

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

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



Out of 122 UAS Licences awarded in 2008, 85 Licences were awarded to the six new entrants (Unitech brand name Uninor, Swan name changed to Etisalat, Allianz since merged with Etisalat, Shipping Stop Dot Com name changed to Loop Telecom, Datacom name changed to Videocon and S Tel) to the telecom sector. As per the conditions of the UAS Licenses, these licensees were required to roll out the services in the 90 % service area in Metros and 10% District headquarters (DHQ) in other service areas within 12 months of the date of award of Licences. Audit found that though these 6 new operators obtained the initial 4.4 Mhz spectrum in 81 service areas during the period April 2008 to January 2009, none of them had rolled out their services as per the provisions of the UAS Licences in any service area till 31 December 2009. Since there were many existing telecom UAS Licensees in dire need of this scarce natural resource, it resulted effectively into hoarding of the finite natural resources of the Nation by these operators. Thus DOT did not earn any revenue from this natural resource during 2008-09 and 2009-10 due to inordinate delay in the commencement of services by these operators. **Further, DoT also failed to recover Liquidated Damages and penalty of ₹ 679 crore from these 6 operators for inordinate delay in the rolling out their services till 31 December 2009.**

5.1

The entry fee fixed for a pan India UAS Licence was fixed at ₹ 1658 crore and as explained in Chapter 3 this price was the same as that captured from the market for a Cellular Mobile Service licence in 2001. The decision of the DoT to adopt this price for UAS licences also was taken in 2003 with a view not to delay the implementation of UASL. The bidding pattern of 2001 would clearly indicate that the 2001 price was discovered in a nascent market and considering the revolutionary changes in the Indian telecom market since then, there is no doubt in concluding that the that the same 2001 price did not reflect the true economic value of a licence and the spectrum bundled with it in 2008. There are two main issues for consideration:

#### **5.1.1 Whether the entry fee was expected to reflect the value of the spectrum at all?**

The 2003 Cabinet decision intended to make the UAS licence only an instrument to enter the business of providing cellular and other telecom services irrespective of the technology used for the purpose. Different spectrum bands support different technology and are used for providing different types of services and thus 2003 UAS policy, in the second phase of UAS licences, was directed at dissociating Licence from the type of service that the service provider intends to provide. Once having obtained a licence or authorisation to provide telecom services, he could obtain spectrum of required type by paying its price through auction or any other arrangement decided by an independent regulator to be set up for spectrum pricing and management. Since the policy was not reviewed for next 4 years, the issue of de-linking the entry fee from the price for the use of spectrum remained unaddressed. TRAI in August 2007, while recommending that 2G spectrum should not be auctioned opined that “in today's dynamism and unprecedented growth of telecom sector, the entry fee determined in 2001 is also not the realistic price for obtaining a licence. Perhaps it needs to be reassessed through a market mechanism”. Since no price discovery of spectrum was attempted for 2G spectrum separately, the entry fee discovered in 2001 is mainly the price of spectrum that came with UAS licence.

#### **5.1.2 What could be the value of the spectrum which was allocated to 122 licensees in 2008 at the price discovered through bidding for licences way back in 2001?**

Any loss ascertained while attempting to value the spectrum in hindsight can only be 'presumptive', given the fact that there are varied determinants like its scarcity value, the nature of competition, business plans envisaged, time of entry, purchasing power of the people, growth of economy etc., which, in a market condition, would throw up the actual price at a given time. It was seen that while

fixing the Reserve Price for 3G and BWA spectrum subsequently, the DoT had correctly observed that “the key determinants of spectrum value in a competitive auction (where demand is more than supply) are the level of competition in the auction and the attractiveness of the business plan for using the spectrum.” Instead of attempting to come to a specific value of 2G spectrum which could have been possible only through an efficient market drawn process for price discovery involving demand and supply position and attractiveness of business plan for using 2G spectrum in future, we have looked at the various indicators to assess a possible (presumptive) value, from the various records available to Audit rather than going for any mathematical/econometric models.

## 5.2 Underpricing of 2G and Consequent Loss

### 5.2.1 UASL applicant had offered higher price

On 5 November 2007 S TEL Limited, who had applied for UAS licence in September 2007, in its communication addressed to the Hon'ble Prime Minister voluntarily offered to pay additional revenue share of ₹ 6,000 crore to the DoT for a Pan-India licence over and above the spectrum charge/ revenue share payable as per existing policy. S TEL Limited in a further communication addressed to Hon'ble MoC&IT dated 27 December 2007 enhanced its earlier offer of ₹ 6000 crore to ₹ 13,752 crore over a period of ten years for allotment of 6.2 MHz GSM spectrum. The Company further agreed to increase the bid price in the event of any counter bid or auction of spectrum for GSM on a Pan-India basis.

5.2.2 If the price offered by S Tel Ltd which he proposed to revise upwards in case of any counter bids, is used as indicator of market valuation of 6.2 MHz of 2G spectrum at that time, value in respect of all 122 new licences and 35 licences under dual technology after discounting the receivables of the future years work out to ₹ 65,909 crore as against ₹ 12,386 crore collected by the DoT as in the table given below.

( ₹ in crore)

Category of Licenses	No of license	Offer price of S Tel for a Pan India License	Discounted Price of S Tel for a Pan India License	Value as per discounted price of S Tel	Amount actually received	Potential loss to exchequer
New UAS Licenses	122	13752	8825	47964	9014	38950
Dual Technology	35	13752	8825	17945	3372	14573
<b>Total</b>				<b>65909</b>	<b>12386</b>	<b>53523</b>

This indicated that had an open process of bidding/auction been used for price discovery and hasty and abrupt changes in deadlines and dates not been made, it could have been possible for the Government to have received at least this amount.

**5.2.3** The DoT replied (July 2010) and again reiterated in the meeting on 4 October 2010 that S Tel had attached conditions to their offer which were not acceptable to the Government. Moreover, the Company withdrew their offer in the Hon'ble Supreme Court and hence there was no loss to the Government. The contention of the DoT is not correct as the S Tel had withdrawn the offer in March 2010 i.e. after more than two years, when the ground realities in the telecom sector had changed viz the competitors had already got the UAS licences along with spectrum, established their infrastructure and started rolling out their services, stiffer competition due to 13/14 operators in certain areas etc.

**5.2.4** Further, the offer made by S Tel is included in this report only as an indicator of the market perception of the value of the 2G spectrum which could have accrued to the Government if the DoT had resorted to a bidding/auction process for allocation of 2G spectrum in 2008.

### 5.3

#### Value based on prices discovered for 3G spectrum

Auction of 3G spectrum was recommended by TRAI in its Report submitted to Government in September 2006 in which they had recommended a Reserve Price for one block of 2x5 MHz 3G spectrum pan India at ₹ 1010 crore which was subsequently enhanced to ₹ 3500 crore by the EGoM constituted to consider the issues relating to auction of 3G spectrum. TRAI in its report of 2010 has observed that 2G services today are actually offering 2.75G services. Therefore ***“while comparing spectral efficiency and other factors, it is fair to compare existing 2.75G systems with 3G systems”***. The Authority recommended 3G prices to be adopted as the current price of spectrum in the 1800 Mhz band and intends to separately study the subject for apprising the Government of its findings. They have recommended even higher pricing at 1.5 times of 1800 Mhz band for the 2G spectrum in 800 and 900 Mhz band.

Besides, comparing the 2G and 3G on their varieties of features and the type of services they could support, scarcity factor and demand and supply position also play important role in determining market price. It was amply demonstrated between September 2007 and December 2008 that its demand in view of its scarcity was at its peak and thus would have fetched the market determined price at a much higher level than that of 2001 entry fee. If price is calculated at 3G rates which can also be taken as one of the indicators for assessing the value of 2G spectrum allocated to UAS licensees in 2008, the value works out to ₹ 1, 11,512 crore against ₹ 9014 crore realised by DoT. Similarly, for spectrum allotted under the dual technology as referred in Paragraph 4.8, the value would have been ₹ 40526 crore, as against ₹ 3,372 crore collected. The total difference in value worked out to ₹ 1,39,652 crore as in the table given below.

(₹ in crore)

Category of Licenses	No of license	3G rate for Pan India Licence	Value as per 3G rate	Amount actually received	Potential loss to exchequer
New UAS Licenses	122	16750	111512	9014	102498
Dual Technology	35	16750	40526	3372	37154
<b>Total</b>			<b>152038</b>	<b>12386</b>	<b>139652</b>

The DoT stated that it was incorrect to calculate the notional loss to the Government for allotment of initial spectrum to new operators for 2G services at 3G price which itself has been recommended by the TRAI beyond 6.2 MHz and which were presently under reconsideration of TRAI.

Audit reiterates that specific value of 2G spectrum could have been discovered only through an efficient market drawn process and in its absence, these are the indicators available which give the hints towards the loss Government could have suffered. The revenue realised through auction of 3G at the rate fetched through a market process is highlighted in this report to project the benefits of resorting to an open price discovery process and the value that spectrum could command without compromising with the policy of open competition. The fact also remains that the Government got ₹ 1.03 lakh crore from the auction of 3G and BWA spectrum against their own estimate of ₹ 35,000 crore.

#### 5.4 Sale of equity by UAS licensee firms at higher value

As per the DoT guidelines on UASL, the total composite foreign direct investment i.e., FDI by an applicant company should not exceed 74 per cent. The 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company and the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company.

**5.4.1** There were several UAS licensees including the new entrants, which have been able to attract significant foreign investments in the recent past. The DoT has given a list of operators who could attract foreign investments, consequent to the grant of UAS Licenses in January 2008 as in the Table on the next page:

Name of the Operator	Percentage of equity transferred	Value of equity transferred ₹ in crore	Name of the Company	
			Seller	Buyer
1. Swan Telecom (Now Etisalat DB Telecom)	5.27% (proposed)	380.50	Genex Exim	Etisalat Mauritius
2. Swan Telecom (Now Etisalat DB Telecom)	44.73%	3217	Swan Telecom	Etisalat International India Ltd.
3. S Tel	5.61% (proposed)	238.5 crore	Sky city Foundations (India) Telecom Investment (Foreign)	BMIC, Mauritius (Foreign)
4. Unitech	67.25%	6120 crore	Unitech Limited (Indian)	Telenor Asia (Foreign)
5. Tata Teleservices	27.31%	12924 crore	TTSL (Indian)	NTT Docomo (Foreign)
6. Tata teleservices (Maharashtra) (TTML)	20.25%	949 crore	TTML (Indian)	NTT Docomo (Foreign)
7. Sistema Shyam Teleservices Ltd. (SSTL)	63.71%	210.33 crore	Shyam Telelinks (Indian)	Sistema Joint Stock (Foreign)
	Fresh Issue	US\$ 678 million (3051 crore)	SSTL (JV with 74% FDI)	ROSIMUSHCHE STVO (Foreign)

Out of the above six, three companies viz. Swan Telecom, S Tel and Unitech were new entrants in the telecom sector. The fact that these operators could draw huge foreign investments, even before establishing a foothold in the Indian telecom market would suggest that acquiring UASL and with it, allotment of 4.4 MHz of GSM spectrum for roll out, was the main factor which attracted the foreign investment.

**5.4.2** The Unitech Wireless Services, claimed in their letter to the DoT on 4 November 2008 that Telenor was partnering with them at a stage when about 6 months of effort and ₹ 2100 crore of expenses had already been put in and the entity's value was not only that of spectrum. However, considering that Telenor is an established international provider of a high quality telecommunications, data and media communication services and one of the Norway's largest companies owned 54% by the Norway Government, what they would have required to run their business in this country was, primarily access to the spectrum. Considering its trained manpower strength in 12 countries, its long standing technical expertise and international experience of dealing in telecom business, it can be convincingly concluded that, the high value paid by them was primarily for the spectrum and not for other inputs claimed to have been infused by Unitech. Such huge equity infusion by the investor company was a price that they paid for 2G spectrum which was allocated to Unitech, a Company with no experience in telecommunication sector, at a throw away price by the DoT. The value which should have accrued to the public exchequer went as a favour to the new licencees in the form of huge capital infusion for enriching their business.

**5.4.3** Based on the above premise, a comparison of foreign equity attracted by the new entrants in the Indian telecom market would reveal that the cost of a pan India licence could be a value between ₹ 7758 crore to ₹ 9100 crore. However, the DoT issued pan India licences at ₹ 1658 crore. As a result 122 licenses and 35 dual technology approvals issued in 2008 could have earned the revenue ranging from ₹ 58,000 crore to ₹ 68,000 crore to the Government against the actual revenues of ₹ 12,386 crore earned by them.

Name of the Company	Value of equity sold	Value of cent percent equity	No. of service areas covered	Entry fee paid	Value for 22 service area	Potential revenue				Potential loss to exchequer
						122 licence	35 dual tech	Total	Amount actually received	
Unitech to (Now Brand Name Unior)	6120 (67.25%)	9100	22	1658	9100	49456	18504	67960	12386	55574
Swan Telecom Ltd. (Now Etisalat DB Telecom)	380.50 (5.27%)	7220	13	1537	7788	42244	15805	58049	12386	45663
Swan Telecom Ltd. (Now Etisalat DB Telecom)	3217 (44.73%)	7192	13	1537	7758					

**5.4.4** The DoT responded to the audit attempts to project a probable value for spectrum by stating that the calculation by Audit was a hypothetical arithmetic exercise and not correct. The attempt by Audit is only to highlight that the price discovery of spectrum through a market mechanism would have fetched a much higher value and thus increased receipts for Government. Non discovery of Price of spectrum through competitive bids/auction in 2007-08 has resulted in huge undue advantage to some of the newly incorporated firms with little or no experience in the Telecom Sector. This is particularly so when the Government of India had followed the market mechanism to determine value of cellular mobile licenses since early 1990s.

## 5.5 Indicators of the value of 2G spectrum

Based on the values determined through various indicators, the loss to the Government on account of grant of new UAS licenses and 2G spectrum during the period 2007-2010 would appear to be in the following range:

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

In an open transparent system, there is a possibility that Government would have earned even more revenue than that these new entrants have been able to attract.

**6.1** Drawing upon NTP 99, a policy framework was established in November 2003 to chart the course for implementation of a Universal Licensing Regime. The Department of Telecommunications of the Ministry of Communications and Information Technology did not make mid course review/modifications, based on the collective wisdom of Government. The recommendations of Telecom Regulatory Authority of India were not followed in spirit, resulting in a transitory phase of the licensing regime continuing for years together without true value of 2G spectrum being realised, while 3G spectrum, a similar resource, was allocated at market price discovered through auction, generating revenues of ₹ 67,718.95 crore. While targeted growth in tele-density had already been achieved, and a reduction in tariff in the telecom sector had benefitted the customer, as envisaged in NTP-99, a policy to ensure optimal utilisation of spectrum and a method to discover its market price was not considered. Given its scarcity value and increasing demand, a comprehensive evaluation of available spectrum was required which was not done. With the UAS policy and its subsequent amendments being implemented in a weak and indeterminate manner and with the reluctance on the part of the Department of Telecommunications to address the issue of pricing of 2G spectrum, it was only natural that 2G spectrum was not allocated at its correct market value.

**6.2** The entire process of allocation of UAS licences lacked transparency and was undertaken in an arbitrary, unfair and inequitable manner. The Hon'ble Prime Minister had stressed on the need for a fair and transparent allocation of spectrum, and the Ministry of Finance had sought for the decision regarding spectrum pricing to be considered by an EGoM. Brushing aside their concerns and advices, the Department of Telecommunications, in 2008, proceeded to issue 122 new licences for 2G spectrum at 2001 prices, by flouting every cannon of financial propriety, rules and procedures. The DoT did not follow its own guidelines on eligibility conditions, arbitrarily changed the cut off date for receipt of applications post facto and altered the conditions of the FCFS procedure at crucial junctures without valid and cogent reasons, which gave unfair advantage to certain companies over others.

**6.3** The Department of Telecommunications also did not do the requisite due diligence in the examination of the applications submitted for the UAS licenses, leading to the grant of 85 out of 122 UAS licences to ineligible applicants. These companies, created barely months ago, deliberately suppressed facts, disclosed incomplete information, submitted fictitious documents and used fraudulent means for getting UAS licences and thereby access to



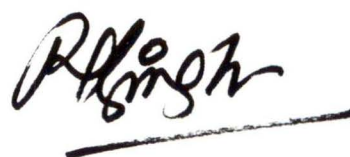
spectrum. Owners of these licences, obtained at unbelievably low price, have in turn sold significant stakes in their companies to the Indian/foreign companies at high premium within a short period of time. The premium earned by these new entrants to the telecom sector was nothing but the true value of the spectrum, which should have normally accrued to the public exchequer, had the transparent and fair market mechanism been followed for the allocation of UAS licences.

**6.4** Dual Technology was also introduced by the DoT in October 2007 in a hasty and arbitrary manner and in-principle approval was given to 3 operators on a day prior to the announcement of the policy, which gave the perception of discrimination against other players in the field. Further this decision was in contravention of the Cabinet decision of 2003, resulting in additional spectrum being allotted to certain operators at 2001 price.

**6.5** The correct value of 2G spectrum allotted to 122 licences in 2008 and the 35 licences under dual technology, also in 2008, could have been determined only by a market driven process, if adopted. However, its presumptive value, based on various available indicators has been indicated in the Chapter 5. In addition, the value of additional spectrum allotted beyond the contractual amount to existing nine operators, based on various indicators has been shown in the Chapter 4 and 5.

**6.6** In conclusion, it is observed that despite having themselves sought the opinion of the Ministry of Law and Justice, the Department of Telecommunications decided to ignore the advice received. The concerns of the Ministry of Finance were also not addressed for reasons which are not convincing. In fact, the directions of the Hon'ble Prime Minister evoked a response from the Hon'ble Minister of Communications and Information Technology on the same day. The letter contained assurances with regard to the availability of spectrum for all applicants as also with regard to the strict adherence to the FCFS policy for allocation of spectrum. The assurances, however, were not adhered to. The methodology for allocation of 2G spectrum, a scarce finite national asset and for which there was an unprecedented demand for allocation, was not deliberated upon by the full Telecom Commission. Audit is of the view that such discussion with different stake holders represented in the Telecom Commission would certainly have benefitted Department of Telecommunications in arriving at a more credible and transparent procedure for allocation as also for ascertaining the true value of 2G spectrum. The entire implementation process does not withstand the test of scrutiny, and hence, the widely held belief that it has benefitted a few operators and has not been able to maximise generation of revenue from allocation of such a scarce resource. This has now been confirmed in Audit. The role of Telecom Regulatory Authority of India would also appear to have been reduced to that of a hapless spectator as its recommendations were either ignored or applied selectively. The entire process of allocation of 2G spectrum raises serious concern about the systems of governance in the Department of Telecommunications which need to be thoroughly

reviewed and revamped. The fact that there has been loss to the national exchequer in the allocation of 2G spectrum cannot be denied. However, the amount of loss could be debated. To ensure that such lapses do not occur in any Ministry or Department of the Government, there is an imperative need to fix responsibility and enforce accountability for the lapses highlighted in the Audit Report.



(R. P. SINGH)

Director General of Audit  
Post and Telecommunications

New Delhi

Date: 8 November, 2010

Countersigned



(VINOD RAI)

Comptroller and Auditor General of India

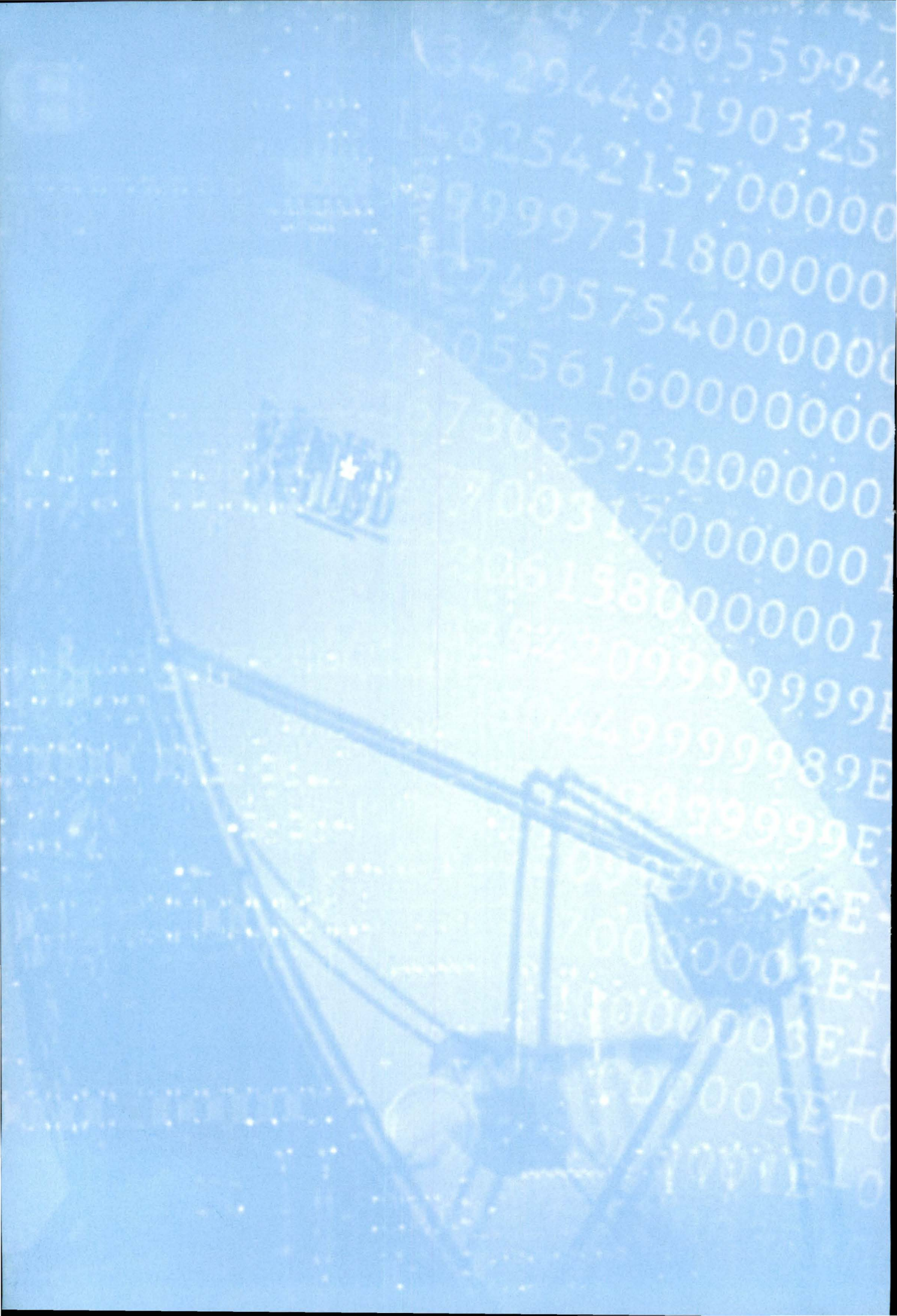
New Delhi

Date: 8 November, 2010



# **ANNEXURES**





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Press Release

In the light of Unified Access Services Licence (UASL) guidelines issued on 14<sup>th</sup> December 2005 by the department regarding number of Licences in a Service Area, a reference was made to TRAI on 13-4-2007. The TRAI on 28-08-2007 recommended that No cap be placed on the number of access service providers in any service area. The government accepted this recommendation of TRAI. Hon'ble Prime Minister also emphasized on increased competition while inaugurating India Telecom 2007. Accordingly, DOT has decided to issue LOI to all the eligible applicants who applied up-to 25-9-2007.

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

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

However, if more than one applicant complies with LOI condition on the same date, the inter-se seniority would be decided by the date of application.

----- 'x' is not necessary as it is new stipulation  
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### Company wise Status of compliances of LOIs issued on 10.01.2008

Sl.	SERVICE AREA	COMPANY	DATE OF APPLICATION	Date of submission of All documents	Time of submission of All documents	Date of submission of Acceptance of Offer	Time of submission of Acceptance of Offer	Date of submission of Entry fee	Time of submission of Entry fee	Date of submission of PBG & FBG	Time of submission of PBG & FBG
1	Mumbai	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	16:10	10/1/2008	16:10	10/1/2008	16:10	10/1/2008	16:10
2	Delhi	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	16:11	10/1/2008	16:11	10/1/2008	16:11	10/1/2008	16:11
3	Andhra Pradesh	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:14	10/1/2008	16:14	10/1/2008	16:14	10/1/2008	16:14
4	Assam	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:14	10/1/2008	16:14	10/1/2008	16:14	10/1/2008	16:14
5	Bihar	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:15	10/1/2008	16:15	10/1/2008	16:15	10/1/2008	16:15
6	Delhi	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:16	10/1/2008	16:16	10/1/2008	16:16	10/1/2008	16:16
7	Gujarat	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:16	10/1/2008	16:16	10/1/2008	16:16	10/1/2008	16:16
8	Haryana	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:17	10/1/2008	16:17	10/1/2008	16:17	10/1/2008	16:17
9	Himachal Pradesh	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:17	10/1/2008	16:17	10/1/2008	16:17	10/1/2008	16:17
10	Jammu & Kashmir	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:18	10/1/2008	16:18	10/1/2008	16:18	10/1/2008	16:18
11	Karnataka	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:18	10/1/2008	16:18	10/1/2008	16:18	10/1/2008	16:18
12	Kerala	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:18	10/1/2008	16:18	10/1/2008	16:18	10/1/2008	16:18
13	Kolkata	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:19	10/1/2008	16:19	10/1/2008	16:19	10/1/2008	16:19
14	Madhya Pradesh	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:20	10/1/2008	16:20	10/1/2008	16:20	10/1/2008	16:20
15	Uttar Pradesh (East)	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:20	10/1/2008	16:20	10/1/2008	16:20	10/1/2008	16:20
16	Uttar Pradesh (West)	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:20	10/1/2008	16:20	10/1/2008	16:20	10/1/2008	16:20
17	Rajasthan	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:21	10/1/2008	16:21	10/1/2008	16:21	10/1/2008	16:21
18	Tamilnadu (including Chennai)	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:21	10/1/2008	16:21	10/1/2008	16:21	10/1/2008	16:21
19	Mumbai	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:22	10/1/2008	16:22	10/1/2008	16:22	10/1/2008	16:22
20	North East	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:22	10/1/2008	16:22	10/1/2008	16:22	10/1/2008	16:22
21	Orissa	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:22	10/1/2008	16:22	10/1/2008	16:22	10/1/2008	16:22
22	Maharashtra	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:23	10/1/2008	16:23	10/1/2008	16:23	10/1/2008	16:23
23	West Bengal	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:23	10/1/2008	16:23	10/1/2008	16:23	10/1/2008	16:23
24	Tamilnadu (including Chennai)	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:30	10/1/2008	16:30	10/1/2008	16:30	10/1/2008	16:30
25	Karnataka	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:31	10/1/2008	16:31	10/1/2008	16:31	10/1/2008	16:31
26	Punjab	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:32	10/1/2008	16:32	10/1/2008	16:32	10/1/2008	16:32
27	West Bengal	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:32	10/1/2008	16:32	10/1/2008	16:32	10/1/2008	16:32
28	Assam	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:33	10/1/2008	16:33	10/1/2008	16:33	10/1/2008	16:33
29	Kolkata	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:33	10/1/2008	16:33	10/1/2008	16:33	10/1/2008	16:33

Sl.	SERVICE AREA	COMPANY	DATE OF APPLICATION	Date of submission of All documents	Time of submission of All documents	Date of submission of Acceptance of Offer	Time of submission of Acceptance of Offer	Date of submission of Entry fee	Time of submission of Entry fee	Date of submission of PBG & FBG	Time of submission of PBG & FBG
120	West Bengal	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:53	10/1/2008	17:56	10/1/2008	17:56	11/1/2008	9:53

Note: M/s Datacom Solutions Pvt. Ltd. has not submitted compliance to LOI for Punjab Service area.

#### SUMMARY OF LoIs issued on 10.01.2008

S.N.	Name of Company	Number of Applications
1	Tata Teleservices Ltd.	3
2	Idea Cellular Ltd.	9
3	Spice Communications Pvt. Ltd.	4
4	Swan Telecom Pvt. Ltd.	13
5	S Tel Ltd.	6
6	Datacom Solutions Pvt. Ltd.	22
7	Loop Telecom Private Ltd.	21
8	Adonis Projects Pvt. Ltd.	6
9	Aska Projects Ltd.	3
10	Azare Properties Ltd.	1
11	Hudson Properties Ltd.	1
12	Nahan Properties Pvt. Ltd.	6
13	Unitech Builders & Estates Pvt. Ltd.	1
14	Unitech Infrastructures Pvt. Ltd.	1
15	Volga Properties Pvt Ltd.	3
16	Shyam Telelink Limited	21
	Total	121



# Annexure-III

DEPARTMENT OF TELECOM  
(ACCESS SERVICES-I SECTION)

No.20-133/2007/AS-I


11<sup>th</sup> January, 2008

Subject: Forwarding of Demand Drafts towards Entry Fee for Unified Access Services Licences.

Kindly find enclosed herewith following Demand Drafts received from M/s. **Volga Properties Pvt Ltd.** in favour of Pay and Accounts Officer (Headquarter) DOT payable at New Delhi towards Entry Fee for Unified Access Services Licences as detailed below:

S. No	DD No.	Issuing Bank	Branch	DD Amt. (In Rs. in crore)	Name of service area
1.	216573	HDFC Bank Ltd.	Kailash Bldg., Delhi	109.01	Gujarat
2.	216574	HDFC Bank Ltd.	Kailash Bldg., Delhi	17.4501	Madhya Pradesh
3.	216575	HDFC Bank Ltd.	Kailash Bldg., Delhi	189	Maharashtra
Total				315.4601	

Receipt of the same may kindly be acknowledged.

  
(Madan Chaurasia)  
Section Officer(AS-I)  
Tel: 6382 / 6574

Encl.: As above in Original

TO: PAO(HQ), DOT, New Delhi

Copy to: DDG(LF) for kind information please.







VALID FOR SIX MONTHS FROM DATE OF ISSUE



DATE 24/12/2007

Payee Negotiable

ON DEMAND PAY PAY & ACCOUNTS OFFICER (HEADQUARTER) DOT

OR ORDER

RUPEES ONE HUNDRED NINE CRORES ONE LAKHS ONLY \*\*

Rs 1,09,01,00,000.00

FOR HDFC BANK LTD.

HDFC BANK LTD.  
Kailash Bldg, Delhi  
Kailash Clg : Delhi  
DRAWEE BRANCH

Kailash Bldg, Delhi  
ISSUING BRANCH

*[Signature]*  
B217 A017 F  
AUTHORISED SIGNATORIES

⑈ 216573⑈ 000240000⑈ 999998⑈ 16



VALID FOR SIX MONTHS FROM DATE OF ISSUE



DATE 24/12/2007

Payee Negotiable

ON DEMAND PAY PAY & ACCOUNTS OFFICER (HEADQUARTER) DOT

OR ORDER

RUPEES SEVENTEEN CRORES FORTY-FIVE LAKHS ONE THOUSAND ONLY \*\*

Rs 17,45,01,000.00

FOR HDFC BANK LTD.

HDFC BANK LTD.  
Kailash Bldg, Delhi  
Kailash Clg : Delhi  
DRAWEE BRANCH

Kailash Bldg, Delhi  
ISSUING BRANCH

*[Signature]*  
B217 A017 F  
AUTHORISED SIGNATORIES

⑈ 216574⑈ 000240000⑈ 999998⑈ 16



VALID FOR SIX MONTHS FROM DATE OF ISSUE



DATE 24/12/2007

Payee Negotiable

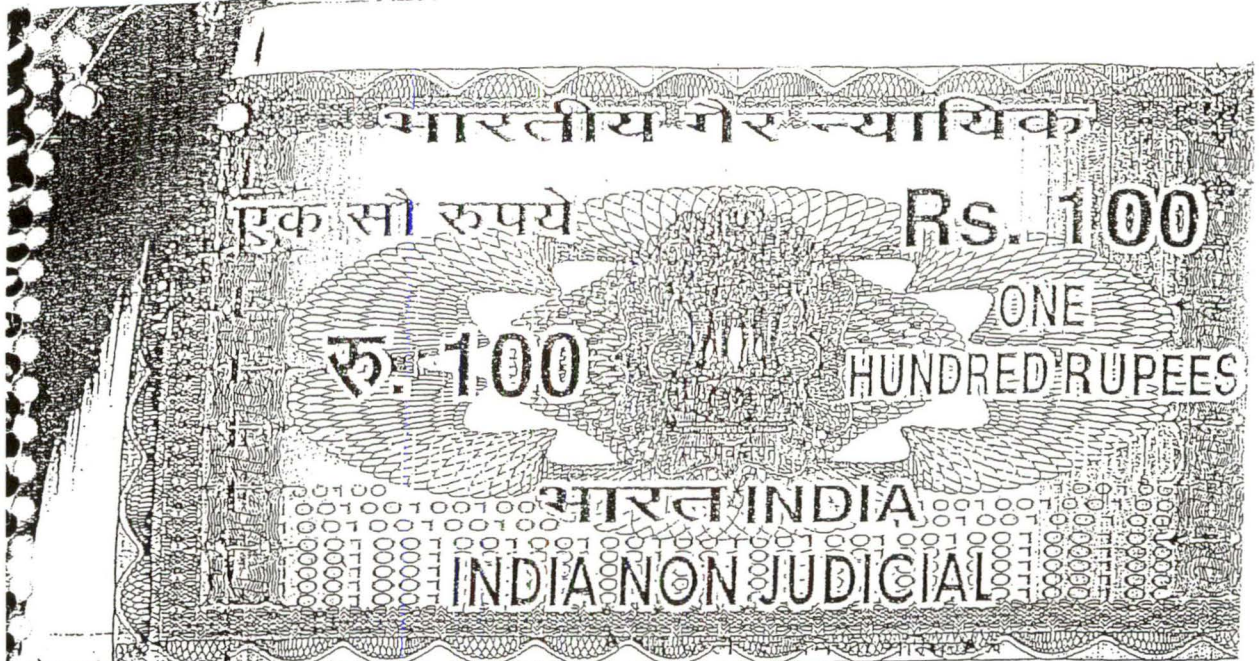
ON DEMAND PAY PAY & ACCOUNTS OFFICER (HEADQUARTER) DOT

OR ORDER

RUPEES ONE HUNDRED EIGHTY-NINE CRORES ONLY

Rs 1,89,00,00,000.00

FOR HDFC BANK LTD.



General Stamp Office, Mumbai.  
S.V. NO. महाराष्ट्र MAHARASHTRA

श्रीगंगा त्रैलोक्य मार्ट, सीएम. १, १, १  
१०४, एच. जी. रोड, एरुपमान्दे मेंचाने, काळापोळवा  
मुंबई-२२. फोन : २२९७ ५७५५

AU 746

1 NOV 2007

परवानाधारक मुद्रांक विब्रेलॉक 8289  
आमना.क्रमांक नं. २६७ 6 NOV 2007

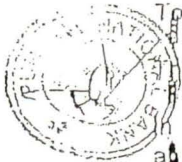
oper SHri. M.K. Upasane

हस्तांक \_\_\_\_\_ दिनांक \_\_\_\_\_  
PUNJAB NATIONAL BANK

M/s/Mrs/Mr \_\_\_\_\_  
पंके न्यायिक गृहणक वेत विकला

*(Signature)*  
परवानाधारक मुद्रांक विब्रेलॉक

FINANCIAL BANK GUARANTEE



The President of India



In consideration of the President of India (hereinafter called 'the Authority') having agreed to grant a Licence to M/s M/s Swan Telecom Private Limited (hereinafter called 'the LICENSEE') to establish, maintain and operate ~~Unmetered Access Services~~ (UAS) (hereinafter called 'the SERVICE') in Mumbai Area in accordance with their Letter Inter/L Licence No. ~~26-82/2007-AS-I~~ dated ~~10/1/08~~ (hereinafter called 'the Licence') on the terms and conditions contained in the said Licence, which inter-alia provides for production of a Bank Guarantee to the extent of Rs. 50,00,00,000/- (Rupees Fifty Crores Only) under the said Licence by way of security for payment of the said Licence fees as well as such other fees or charges required to be paid by the LICENSEE under the Licence.



*[Handwritten mark]*

Notwithstanding anything contained herein above, our liability, under the Guarantee shall be restricted to Rs. 50,00,00,000/- (Rupees Fifty Crores Only) and our Guarantee shall remain in force until One year from the date hereof i.e. 31/1/09. Unless a demand or claim under this Guarantee is made on us in writing within this date i.e. 31/09 all your rights under the Guarantee shall be forfeited and we shall be released and discharged from all liabilities thereunder.



Dated 10<sup>th</sup> day Jan 08 for (Name of the Bank)



Witness:

*[Signature]*

1. ....

*P. P. Rayamohan*  
P.N.B. P.N.B. House,  
Mumbai

2. *A. Lakshmi*  
A. Lakshmi K.V.M.A.P.

P.N.B.  
P.N.B. H.O. P.S., Mumbai

For PUNJAB NATIONAL BANK  
PNB HOUSE, MUMBAI - 400 601.

*[Signature]*  
Officer

*[Signature]*  
13/1/08  
Manager

ILG No. ....  
006211C 0002/08  
dt 10/1/08

28/11/07  
149330  
24/11/07

Showing date of payment of stamp duty after submission of application

**FORM 5**

Notice of consolidation, division, etc. or increase in share capital or increase in number of members

(Pursuant to sections 85, 87 or 84A(2) or 87(2) of the Companies Act, 1956)

Note - All fields marked in are to be mandatorily filled.

1(a) Corporate Identity Number (CIN) of company

(b) Global location number (GLN) of company

2(a) Name of the company

(b) Address of the registered office of the company

3. Purpose of the form:

Consolidation or division etc.  Increase in share capital independently by company

Increase in number of members  Increase in share capital with Central Government order

4. Notice is hereby given that

(i) In accordance with section 85 of the Companies Act, 1956 that the company has

a.  Consolidated  equity  preference shares of Rs.  each into shares of Rs.  each

b.  Converted  shares of Rs.  each into stock of Rs.

c.  Reconverted the stock of Rs.  into  shares of Rs.  each

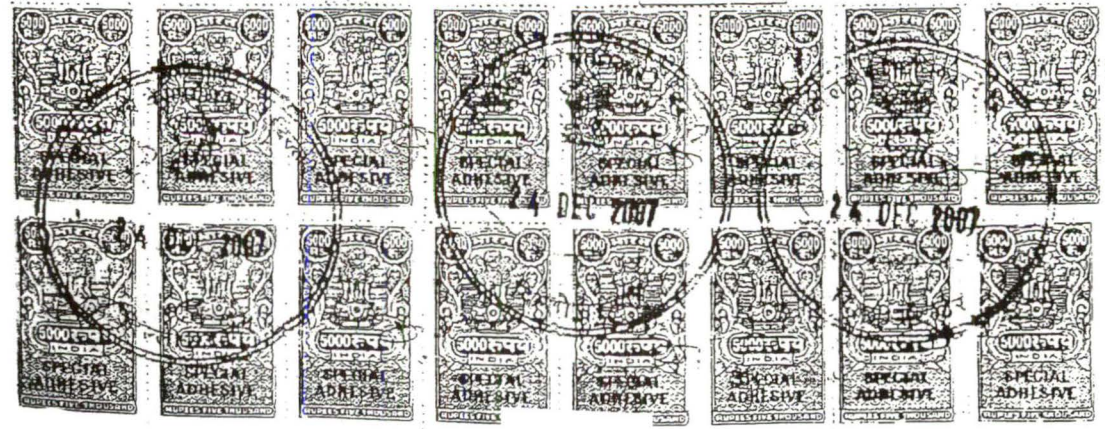
d.  Subdivided  equity  preference shares of Rs.  each into shares of Rs.  each

e.  Redeemed  redeemable preference shares of Rs.  each

f.  Cancelled   equity  preference shares of Rs.  each

(ii) In accordance with section 87 of the Companies Act, 1956, that by  Ordinary  Special resolution at the meeting of the members of the company held on  (DDMMYYYY),

Service request number (SRN) of related Form 23



20036  
11501500  
24/08/07

# FORM 5

Notice of consolidation, division, etc. or increase in share capital or increase in number of members

[Pursuant to sections 95, 97 or 94A(2) or 81(4) of the Companies Act, 1956]

Note - All fields marked in \* are to be mandatorily filled.

1(a). \*Corporate identity number (CIN) of company   Pre-filled

(b). Global location number (GLN) of company

2(a). Name of the company

(b). Address of the registered office of the company

3.\*Purpose of the form:

- Consolidation or division etc.  Increase in share capital independently by company  
 Increase in number of members  Increase in share capital with Central Government order

4.\*Notice is hereby given that

(i). In accordance with section 95 of the Companies Act, 1956 that the company has

- a.  Consolidated  equity  preference shares of Rs.  each into shares of Rs.  each
- b.  Converted  shares of Rs.  each into stock of Rs.
- c.  Reconverted the stock of Rs.  into  shares of Rs.  each
- d.  Subdivided  equity  preference shares of Rs.  each into shares of Rs.  each
- e.  Redeemed  redeemable preference shares of Rs.  each
- f.  Cancelled   equity  preference shares of Rs.  each

(ii). In accordance with section 97 of the Companies Act, 1956, that by  Ordinary  Special resolution at the meeting of the members of the company held on  (DD/MM/YYYY)

Service request number (SRN) of related Form 23



PTO

Rs. Twenty Four Lakhs Twenty

I.C.I.C.I Bank Ltd.  
30, Mumbai Saranagar  
Marg, Fort, Mumbai-400001

भारत 69582  
133309

Special  
Adhesive  
MAR 01 2007

D-57STP(V)/C.R. 1019/D1/2004/2058-70

# FORM 5

[Pursuant to sections 95, 97 or 81(4) of the Companies Act, 1956]

Rakesh Saxena  
Officer  
I.C.I.C.I Bank Ltd.

Notice of consolidation, division, etc. or increase in share capital or increase in number of members

INDIA STAMP DUTY MAHARASHTRA

Note - All fields marked in \* are to be mandatorily filled.

1(a). \*Corporate identity number (CIN) of company    
(b). Global location number (GLN) of company

2(a). Name of the company

(b). Address of the registered office of the company

राजकी रजिस्ट्रार ऑफिस  
REGISTRAR OF COMPANIES  
MAHARASHTRA-MUMBAI

14 MAR 2007

3.\*Purpose of the form  
 Consolidation or division etc.  Increase in share capital independently by company  
 Increase in number of members  Increase in share capital with Central Government order

4.\*Notice is hereby given that

(i). In accordance with section 95 of the Companies Act, 1956 that the company has

- a.  Consolidated  equity  preference shares of Rs.  each into shares of Rs.  each
- b.  Converted  shares of Rs.  each into stock of Rs.
- c.  Reconverted the stock of Rs.  into  shares of Rs.  each
- d.  Subdivided  equity  preference shares of Rs.  each into shares of Rs.  each
- e.  Redeemed  redeemable preference shares of Rs.  each
- f.  Cancelled   equity  preference shares of Rs.  each

(ii). In accordance with section 97 of the Companies Act, 1956, that by  Ordinary  Special resolution at the meeting of the members of the company held on  (DD/MM/YYYY)  
Service request number (SRN) of related Form 23

# Annexure-VI

(PROCESSING FEE OF APPLICATION FORM – RS. 15,000/- ONLY)

de

GOVERNMENT OF INDIA  
MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY  
DEPARTMENT OF TELECOMMUNICATIONS  
(BS CELL)

SANCHAR BHAWAN, 20 ASHOKA ROAD, NEW DELHI-110 001.  
APPLICATION FOR LICENCE TO PROVIDE UNIFIED ACCESS SERVICE (UASL)  
IN PUNJAB SERVICE AREA

1. Name of Applicant Company: SWAN TELECOM PRIVATE LIMITED  
(FORMERLY KNOWN AS SWAN CAPITAL  
PRIVATE LIMITED)

2. Complete postal address  
with Telephone/FAX Nos./E-Mail

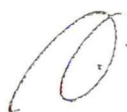
i) Corporate Office  
7<sup>th</sup> Floor, Raheja Point - I,  
Jawaharlal Nehru Marg, Vakola Market  
Santa Cruz (East)  
Mumbai 400 055  
Phone : +91 22 3032 7806  
Fax No. +91 22 3032 7896  
email : hari.nair@relianceada.com

ii) Registered Office  
7<sup>th</sup> Floor, Raheja Point - I,  
Jawaharlal Nehru Marg, Vakola Market  
Santa Cruz (East)  
Mumbai 400 055  
Phone : +91 22 3032 7806  
Fax No. +91 22 3032 7896  
email : hari.nair@relianceada.com





3. Address for correspondence with Telephone/FAX Nos./E-mail 7<sup>th</sup> Floor, Raheja Point - I,  
Jawaharlal Nehru Marg, Vakola Market  
Santa Cruz (East)  
Mumbai 400 055  
Phone : +91 22 3032 7806  
Fax No. +91 22 3032 7896  
email : hari.nair@relianceada.com
4. Name of Authorised contact person, his designation, address and Telephone/FAX Nos./Email Mr. Hari Nair  
Company Secretary  
7<sup>th</sup> Floor, Raheja Point - I,  
Jawaharlal Nehru Marg, Vakola Market  
Santa Cruz (East)  
Mumbai 400 055  
email : hari.nair@relianceada.com
5. Details of payment of processing fee (DD/PO to be enclosed in a separate envelope).  
Demand Draft No. 345836 dated 1.03.2007 drawn on ICICI Bank Limited,  
payable at New Delhi
6. Certified copy of Certificate of Registration along with Articles of Association and Memorandum of Association.  
- Copy of Memorandum and Articles of Association of the Company is attached as Annexure A
7. (a) Details of Promoters/Partners/Shareholder in the Company: The Promoters to be indicated.



S.No.	Name of Promoter/ Partner/Shareholder	Indian/ Foreign	Equity %age.	Networth
1.	Tiger Traders Private Limited	Indian	90.10	Rs. 1 lakh
2.	Reliance Telecom Limited	Indian	9.90	Rs. 314.70 crore

( Complete break-up of 100% of equity must be given. Equity holding upto 5% of the total equity shared among various shareholder can be clubbed but Indian and Foreign equity must be separate.)

(b) **Equity details**

Indian	100 %
Foreign	Nil
<b>Total</b>	<b>100 %</b>

( Copy of Certificate from Company Secretary is attached- Annexure B)

(c) The applicant is required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74%.

(Certificate from Company Secretary to be attached)

NIL

8. Details of the Cellular and Unified access licence in the name of the applicant company and Networth required for the Licence -

No. of Cellular/UAS licence in category A service area	No. of Cellular/UAS licence in category B service area	No. of Cellular/UAS licence in category C service area
A -	<b>B - UASL Licence for Punjab</b>	C-
A * 100=P	B* 50=Q Rs.50 Crore	C* 30=R

Total = P+Q+R Rs.50 Crore

**Auditors Certificate for Net worth of the Applicant Company is attached as Annexure C**

**Swan Capital Private Limited**

Regd. Office: 7<sup>th</sup> Floor, Raheja Point - I, Jawaharlal Nehru Marg, Vakola Market,  
Santa Cruz (East), Mumbai 400 055

---

TO WHOMSOEVER IT MAY CONCERN

This is to certify that:

1. The equity share capital of Swan Capital Private Limited is held by Tiger Traders Private Limited (90.13% of the equity share capital) and Reliance Telecom Limited (9.87% of the equity share capital).
2. Tiger Traders Private Limited holds the shares as trustees of India Telecom Infrastructure Fund, which is set up for the benefit of various corporate beneficiaries.
3. The aforesaid corporate beneficiaries are not part of Reliance ADA Group and neither Shri Anil Ambani nor his family or Reliance ADA Group companies holds any shares in these companies. These Corporate beneficiaries do not hold any shares in Reliance Telecom Limited, Reliance Communications Limited, or in any other telecom licensee or in any company of the Reliance ADA Group.
4. The enclosed chart correctly sets out the pattern of shareholding of Swan Capital Private Limited.

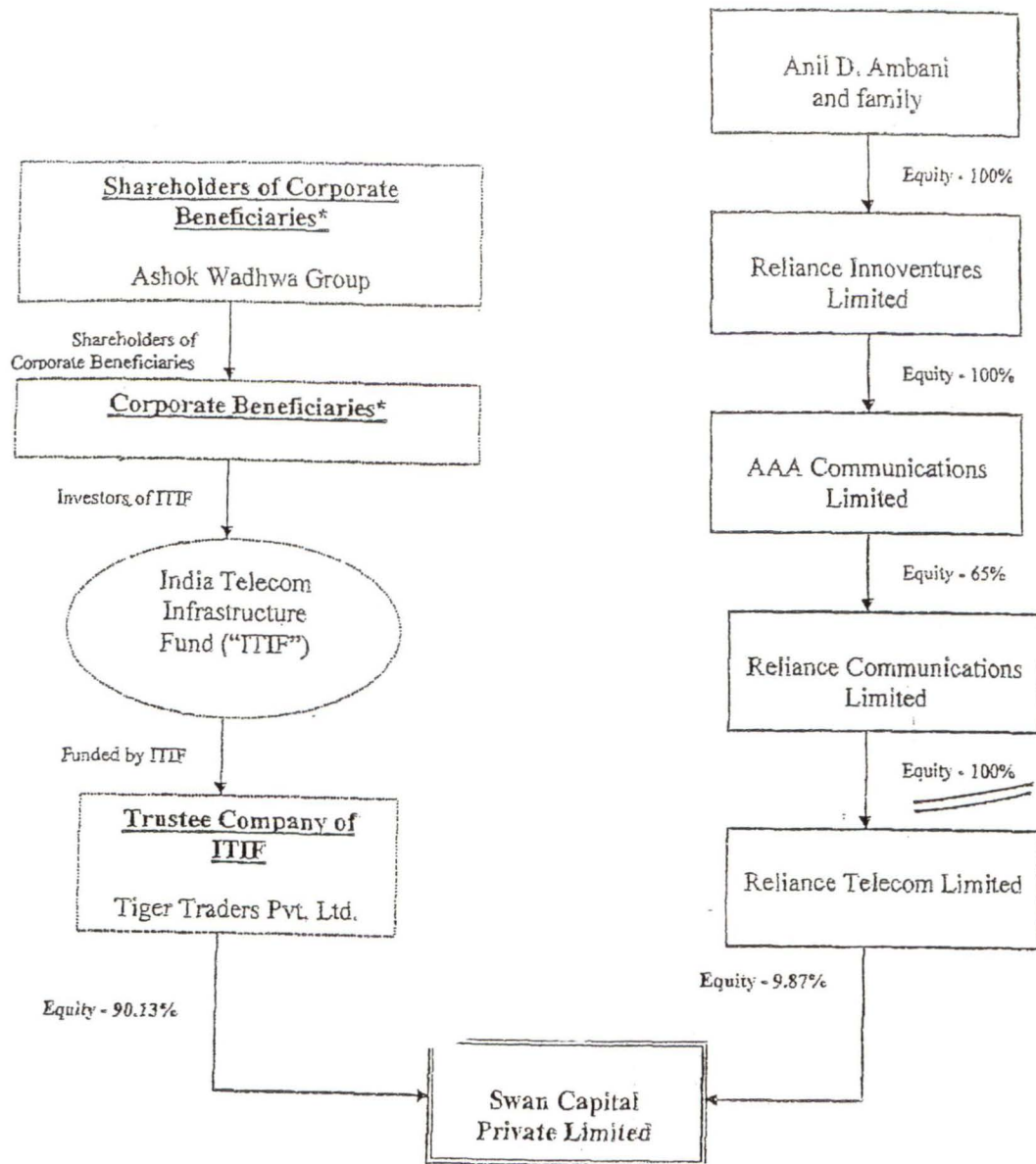
For Swan Capital Private Limited



Hari Nair  
Company Secretary

Place: Mumbai  
Date: February 1, 2007

Equity shareholding structure of Swan Capital Pvt. Ltd.



For Swan Capital Private Limited

  
 Hari Nair  
 Company Secretary

1

2

3

4

5

6

7

8

9

#

0

\*



**© Comptroller and Auditor  
General of India  
2010-11  
Website: <http://www.cag.gov.in>**

**PRICE  
INLAND: ₹ 65.00  
FOREIGN: US\$ 5.00  
(Including postage/air mail)**