

Cellular Operators Association of India

RSM/COAI/096
June 10, 2011

Director (TLS)
Lok Sabha Secretariat,
Room No.004,
Basement, Parliament House Annexe,
New Delhi-110 001

Dear Sir,


Sub: Joint Parliamentary Committee to examine matters related to allocation and pricing of Telecom Licences and Spectrum from 1998-2009 – Furnishing written memorandum

We acknowledge the receipt of your Letter No. 1/1/JPC(TLS)/2011 dated June 8, 2011.

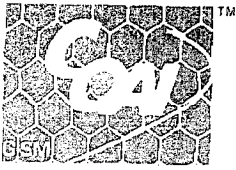
We would like to inform that we have already submitted our written memorandums to you electronically via e-mail as well as two hard copies in a sealed envelope vide our Letter No. RSM/COAI/093 dated June 10, 2011. A copy of the same is enclosed once again for your ready reference.

Sir, we hope our submissions will merit your kind consideration. We would also appreciate if we could be granted the opportunity to appear before the Committee with senior representatives of our member companies and make our submissions in person.

Kind Regards,


Rajan S. Mathews
Director General


13/6/11



Cellular Operators Association of India

RSM/COAI/093
June 10, 2011

Director (TLS)
Lok Sabha Secretariat,
Room No.004,
Basement, Parliament House Annexe,
New Delhi-110 001

Dear Sir,

**Sub: Press Communication On Joint Parliamentary Committee To Examine
Matters Relating To Allocation And Pricing Of Telecom Licences And Spectrum**

This is with reference to the subject matter.

In this regard, please find enclosed two copies of Memoranda to the Committee containing our views and suggestions on the subject in a sealed envelope.

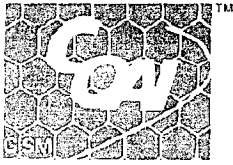
Sir, we hope our above submissions will merit your kind consideration and we once again apologize for our delayed response.

Kind Regards,

Rajan S. Mathews
Director General

Ajay
10/6/11

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Cellular Operators Association of India

RSM/COAI/092
June 10, 2011

Shri. P.C. Chako, MP
Hon'ble Chairman
JPC to Examine Matters Relating to
Allocation & Pricing of Telecom Licenses and Spectrum
Parliament House Annex
New Delhi - 110001

Respected Sir,

**SUB: MEMORANDA TO THE JOINT PARLIAMENT COMMITTEE TO EXAMINE MATTERS
RELATING TO ALLOCATION AND PRICING OF TELECOM LICENSES AND SPECTRUM**

Cellular Operators Association of India (COAI) is the official voice for the Indian GSM industry at par with the international GSMA and is involved in interacting with the licensor (policy maker), the regulator, the spectrum management agency, the industry (telecom /non-telecom) associations, the security agencies to help focus on initiatives and address problems of cellular operators relating to operational, regulatory, financial, or licensing through interaction with the Ministry of Communications & IT, Ministry of Home Affairs, Ministry of Finance, Ministry of Commerce, Department of Telecommunications, Telecom Regulatory Authority of India, Financial Institutions, etc.

We thank you for inviting views and suggestions from the public in general, experts and stakeholders on the matters relating to Allocation and Pricing of Telecom Licenses and spectrum with the following Terms of Reference of the Committee as communicated in the Press Communication dated 29.03.2011.

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



At the outset, we would like to apologize for our delayed submission, however, we believe that due to the criticality involved in the matter and to take a holistic view, the esteemed Committee would take our submissions into consideration.

Our submissions in this regard are as follows:

1. When mobile services were first introduced in India in 1995, the initial growth was stifled by high prices resulting from very high license fees. Since then, a series of initiatives have completely transformed the mobile landscape. Introduction of NTP-99, migration of existing operators to the current revenue share regime, introduction of a Calling Party Pays (CPP) regime have all contributed to significantly enhancing affordability, increased consumer choice and the overall growth of the industry and its significant impact on enhancing the quality of lives of millions of Indians and contribution to the national GDP.
2. With the implementation of NTP-99, the operators migrated from a fixed license fee regime to a fixed entry fee plus revenue share mechanism. This migration was a bilateral settlement between the industry and the Government, wherein, the private operators gave up their duopoly rights and claims of several thousands of crores against the Government in return for migration to NTP.
3. Migration to revenue share regime was one of the biggest enabler to the industry for provision of affordable services to the citizens of the country.
4. The industry was performing well until 2001, when limited mobility under the fixed service license, WLL (M), was introduced at no additional fee. However, very soon this limited Mobility morphed into full blown mobility. Taking advantage of the situation, two large business houses (Reliance and TATA) took this opportunity to acquire pan India Fixed plus WLL(M) licenses. This created severe disturbances in the level playing field as existing cellular operators had paid a large entry fee for their licenses, whereas fixed operators got the right to mobility at a nominal entry fee.
5. This was challenged by then existing cellular operators in the Supreme Court and the matter was finally settled through the amendment of Policy and the introduction of Universal Access Service (UAS) (Fixed plus Mobile) Licenses in 2003 which allowed the fixed operators to migrate to a UAS license by paying the difference between the entry fee paid by them and the entry fee paid for the 4th Cellular license in 2001. We would like to highlight and bring to your notice that TRAI itself found that Reliance Communications had been violating the licence conditions of limited mobility and had been acting as a cellular operator from inception of license. A heavy penalty of around Rs. 400 crores was imposed on and paid by Reliance Communications.
6. Thereafter, the industry grew at an exponential pace delivering a variety of affordable services to the subscribers.



7. However, in 2007, again a policy decision of dual technology was taken by the Government in a non-transparent and illegal manner especially favouring Reliance. At this time, the existing policy was changed to give Reliance Communications the benefit of double spectrum (both GSM and CDMA) under the same license while simultaneously denying adequate and timely spectrum to the existing GSM operators.
8. It is our view that all the irregularities and aberrations in policy have been such as to provide undue benefits to the erstwhile fixed operators, especially Reliance Communications. The largesse provided to Reliance Communications is listed as below:

A) Changing existing policy and existing license conditions to preferentially give GSM Spectrum to CDMA Operators (under the pretext of alternate technology):

- i) In January 2001, DoT prescribed that GSM frequencies will not be allocated under any circumstance to Basic Service Licensees (which included Reliance Communications and TATA Teleservices Ltd who were providing WLL (M) on CDMA).
- ii) Also their Licenses on migration to Unified Access Services in 2003 mentioned that the allotment of frequency shall be made only **EITHER** on GSM platform **OR** on CDMA platform. Thus **BOTH** GSM and CDMA could not be allotted.
- iii) DoT however changed the policy and license conditions and implemented the new policy in a malafide, non-transparent and illegal manner to benefit only CDMA players by:
 - a) First issuing In-Principle Approval on 18.10.2007 to some CDMA operators to use GSM frequencies.
 - b) Such In-Principle approval was given to Reliance Communications based on some applications made by Reliance Communications in February 2006 which were invalid, since at the time of filing the said application there was no such then existing policy on dual spectrum.
 - c) 19.10.2007 – Within the space of one day, the DoT also allowed Reliance Communications to make payments of hundreds of crores and complete formalities on 19.10.2007 morning even before the policy change was announced. The payments were kept ready by Reliance Communications beforehand which clearly indicates that they had full inside information of what was happening within DoT.
 - d) DoT also changed the existing policy of spectrum allocation from “FIRST COME FIRST SERVED” to “FIRST PAY FIRST SERVED” overnight, without knowledge to public or stakeholders.
 - e) Reliance was given Letter of Intent (LOI) for 20 Service Areas on 18.10.2007 and upon making the payments on 19.10.2007; it was given illegal priority in the queue for spectrum.



- f) Only after ensuring that spectrum allocation was secured for Reliance Communications, on 19.10.2007 did DoT issue the Press Release making its decision of allowing Dual Spectrum and allocation of spectrum on First Pay First Served known to public including other stakeholders.
- iv) 24.12.2008- The LOI issued to Reliance Communications on 18.10.2007 stated that the fee paid by it for dual spectrum would be “**non-refundable**”. However, on 24.12.2008, DoT “refunded” the entry fee for 6 service areas (on the grounds that since subsidiary of Reliance Communications, namely Reliance Telecom Ltd (RTL) was already operating GSM services in 6 out of the 20 service areas for which the LOI was given, the said LOI is withdrawn for those 6 service areas and the company was to be refunded the entry fee of Rs. 112.5601 crores). The fact that RTL was operating GSM services in 6 service areas was well known to the DoT even in October 2007. In no other case has DoT ever refunded an entry fee. All this demonstrates undue haste and inclination to favor one company viz – Reliance Communications.

B) De Facto Super License

- i) It was surprising that under the garb of an additional allotment under an existing license Reliance Communications was given an initial allotment as applicable to a new license. All the norms, procedures and terms are those that are applicable to a new licensee applicant viz.
 - payment of an entry fee.
 - allotment of “initial” spectrum of 4.4 MHz.
 - treatment of different technology streams separately for the purpose of levying spectrum usage charges.

but with added advantages

- consideration of an invalid application of February 2006 to ensure priority position for allotment of spectrum.
- in disregard of the cross shareholding restrictions under license.
- no rollout obligations.
- disregard of default in existing rollout obligations.
- lower spectrum usage charge.

C) More spectrum than any other operator

- i) The impugned decision of the Government to permit cross technology allotments by way of a dual allocation of spectrum tilted the playing field in favour of one large CDMA operator, Reliance Communications, in particular, by giving double or even four times the quantum of spectrum vis-à-vis his competitors.



- ii) In fact vide this impugned decision, the Government paved the way for Reliance Communications to amass as much as 20 MHz spectrum in some service areas, with no onus or responsibility to use the same efficiently.
- iii) This is because despite Reliance Communications already holding a GSM license as well in some service areas, the Government went ahead and gave an in-principle approval (and accepted payment) for allotment of GSM spectrum under the CDMA license as well. Though the payment was refunded back to them later.
- iv) Just to facilitate crossover spectrum to Reliance Communications, the GSM spectrum allocation criteria was made unduly stringent in an arbitrary manner and the applications of existing GSM operators for additional spectrum was put on hold.

D) Lower Spectrum Usage Charges

- i) It may be noted that by treating the revenue streams from the two technology streams separately for the purpose of levying spectrum usage charges, Government has not only unilaterally departed from TRAI recommendations and thereby violating the fifth proviso of the TRAI Act, but has also conferred huge financial largesse on Reliance Communications.
- ii) This is because Government follows an escalating usage charge approach and increased quantum of spectrum, irrespective of technology attracts a higher usage charge. This effectively means that these dual technology operators have more spectrum but pay less charges.
- iii) The dual spectrum holding has also helped the CDMA operators in offering 3G EVDO services in their 800 MHz spectrum.
- iv) Spectrum charges are currently discriminatory with regards the 2G spectrum held by different operators. GSM Operators who hold the 2G spectrum in 900MHz / 1800MHz pay higher spectrum charges on the total 2G spectrum held by them. However, on the contrary, the dual technology operators, who have 2G spectrum both in 800MHz (for CDMA) and 1800MHz (for GSM) pay separate spectrum charges for the spectrum held by them in 800MHz (for CDMA) & 1800MHz (for GSM) respectively, thereby gaining huge unfair arbitrage;
- v) The Government has a stated policy that the licences are technology neutral. It is therefore unjustifiable as to why for the purpose of payment of spectrum charges; the revenues & spectrum are being calculated separately for 800MHz and 1800MHz in case of dual technology operators rather than treating it as a combined 2G spectrum. As a result, the Government has lost around Rs.800 crores in the last 3 years and shall stand to lose Rs.5000 crores in another 10 years on this account only.
- vi) Under the current policy, GSM operators have been paying the largest revenue to the government for usage of spectrum. On the contrary CDMA operators pay insignificant or



very low revenues for the usage of more or equal amounts of spectrum. This aspect for a pan-India GSM operator is highlighted in Annexure-1.

E) No requirement to use spectrum efficiently

- i) It is submitted that the fact that the spectrum is being given under an existing license to an operator who already has spectrum, license conditions mandate that any additional spectrum that is granted to the operator must be in compliance with the license conditions for the allotment of the said additional spectrum, viz.
 - a) It must be given only upon optimal utilization of existing allotments.
 - b) It must be given in tranche / quantum that are applicable for such additional allotments, i.e. around 2 MHz in the case of GSM and 1.25 MHz in the case of CDMA.
- ii) In respect of (a) above, it is submitted that except in a few service areas, the said large CDMA operator who has been permitted to acquire cross technology allotment of GSM spectrum, was not entitled to any allotment of additional spectrum even as per the subscriber allocation criteria of March 29, 2006.
- iii) It was also surprising that the Government had shown such undue haste in tightening the criteria for the GSM operator so as to make available necessary spectrum to facilitate such cross technology allotments in GSM, but showed no inclination or similar urgency to review the efficient use of the spectrum by the CDMA operators to ensure that any additional allotments are made to them, only after the application of a similarly tightened criteria for CDMA as well. Such an approach by the Government clearly exposed the ulterior motive of the DoT behind the entire exercise.

F) Violation of the Cross Shareholding Clause under License

- i) Clause 1.4(ii) of the UAS license states that:

No single company/ legal person, either directly or through its associates, shall have substantial equity holding in more than one LICENSEE Company in the same service area for the Access Services namely; Basic, Cellular and Unified Access Service. 'Substantial equity' herein will mean 'an equity of 10% or more'. A promoter company/ Legal person cannot have stakes in more than one LICENSEE Company for the same service area.
- ii) It is very clear from the above clause that a promoter company cannot have any stake in another licensee company in the same service area. Clause 1.3.1 of the UAS license explains that condition 1.4 (ii) is to ensure that competition is not compromised.
- iii) By giving the CDMA operator a new license under the name of an existing company and in the garb of a cross technology / additional allotment is a clear attempt to evade the



provisions of the cross holding clause. The above clause is one of the basic criterion in evaluation of new applications for allocation of licenses. Accepting the payments for 6 circles, on 19/10/2007 and refunding this on 24/12/2008 i.e. after a gap of 14 months clearly indicates the lack of diligence and oversight, apparently deliberate, on the part of various processing officials of the Government who handled this case. Interestingly enough, in a Government office which is designed for examining and scrutinizing such applications on a regular and routine basis, such a glaring omission was not brought to the notice and timely corrective measures were not taken.

G) Default in Existing Rollout Obligations

- i) It may also be pointed out that the said large CDMA operator had been given the approval and allowed to make the payment despite being one of the largest defaulters in their rollout obligations in all their service areas.
 - ii) Such permission is all the more surprising as TRAI had unambiguously recommended that no existing operator will be given any additional spectrum till they have complied with their rollout obligations. This recommendation was accepted by the Government. But despite this, the said operator has been permitted this additional spectrum and also allowed to make payments for the same.
9. The entire dual spectrum policy and its elements stated above were challenged by the COAI and its members in TDSAT in 2007. In 2009, the TDSAT dismissed this Petition and upheld the dual spectrum policy. This Judgment of TDSAT was appealed by the COAI in 2009 itself and the matter is presently pending in the Hon'ble Supreme Court. However, it is to be noted that many major contentions of the COAI which were overruled by the TDSAT have now been noted by other bodies looking into this matter. These contentions along with the notings of the other bodies are given as Annexure-2.
10. Thus, in our view, all the irregularities and aberrations in Government policy as applied by the DoT have been such as to provide undue benefits to the erstwhile fixed operators, especially Reliance Communications. These operators:
- a) Acquired fixed licenses bundled with valuable 800MHz spectrum at a nominal fee
 - b) Were given an assured route to mobility in 2003 through migration to UASL (giving them an advantage over operators who had bid, but lost the 4th Cellular license bid)
 - c) The entry fee paid was fixed at the price paid in 2001 for 1800 MHz spectrum
 - d) Were given a second license through the dual spectrum policy in 2007 again at a price fixed in 2001.
11. Through the above, the fixed operators were transformed into operators holding both CDMA as well as GSM spectrum, benefiting at each stage from the various policy irregularities and aberrations that are currently being examined by the JPC.



12. Also on the issue of allocation of GSM spectrum beyond 6.2 MHz, we would like to submit that the spectrum has been allocated on the basis of the license and Government policy, i.e., subscriber linked criteria. Even the Government has stated on the floor of the Parliament and in the TDSAT that existing spectrum allocations including the allocation for spectrum beyond 6.2MHz are absolutely legal and as per the license conditions. Government position before the Parliament and the TDSAT is enclosed as Annexure-3.

Our Recommendations for the Way Forward –

- a) Anomalies related to dual allocation of spectrum like irregular spectrum charges etc. should be resolved.
- b) Spectrum is a key resource and should be allocated through a market based mechanism, viz. auction.
- c) A market-determined mechanism for spectrum allocation will ensure that spectrum goes to the entity that puts the highest value on spectrum, and is best placed to ensure its optimal use.
- d) The Expert Committee set up by DoT under the Chairmanship of Shri. Subodh Kumar, AS (T), DoT to look into the issues of spectrum allocation and Pricing also recommended auctions as a way forward.

Sir, we hope our above submissions will merit your kind consideration and we once again apologize for our delayed response. Any of the documents mentioned in our submission would be made available to the Committee if so desired.

We would also appreciate if we could be granted the opportunity to appear before the Committee with senior representatives of our member companies and make our submissions in person.

Kind Regards,

Rajan S. Mathews
Director General

Example of a Pan India Operator Paying Higher Spectrum Usage Charges than Dual Technology Operators

For instance, in FY 2009-10, GSM operators like Bharti Airtel paid Rs.1265 crores as spectrum charges as compared to Rs.192 crores and Rs.217 crores paid by Reliance & TATA respectively in the same period.

It is evident from the above data that the regulatory arbitrage between two set of operators runs into thousand of crores and is a critical issue which has unfortunately not been addressed even by TRAI's latest recommendations on spectrum pricing in May 2010 and February 2011. The below table shows as to how the regulatory arbitrage exists within the telecom Industry by taking the example of a GSM operator (Bharti Airtel) and CDMA operators (Reliance and Tata)

Economic Efficiency of spectrum among leading telecom operators

S. No.	Particulars	Reliance			TATA			Bharti
		GSM	CDMA	TOTAL	GSM	CDMA	TOTAL	
1	Total Number of UASL Licenses*	28			22			22
2	Total 2G spectrum being held	In MHz			In MHz			167.0 MHz
		113.00	92.50	205.50	79.20	76.25	155.45	
3	Average 2G Spectrum being held (service area wise) (total combined 2G spectrum / 22 service areas)	9.34MHz			7.07MHz			7.59MHz
4	Annual Spectrum charges being paid **	237.08 crores			246.77 crores			1192.31 crores
5	Spectrum Charges to be paid in next 10yrs with 8% revenue growth (from 2011-2021)**	3709 crores			3851 crores			18654 crores
6	Annual spectrum Charges Per MHz **	24.44 crores			31.55 crores			145.43 crores
7	Annual Spectrum Charges per million subscribers (Subscribers as on Sep'2010)**	2.02 crores			3.12 crores			8.32 crores
8	Annual Spectrum Charges per UASL licence**	8.47 crores			11.22 crores			54.20 crores

* Reliance Group holds 28 UASL licenses (i) 20 in Reliance Communication and (ii) 8 in Reliance Telecom Limited.

** The spectrum pricing data is based on TRAI report for last four Quarters, i.e. Q3 & Q4 of FY 2009-10 and Q1 & Q2 of FY 2010-11)

The following is an overview of some of the submissions made by COAI in TDSAT which were rejected vide TDSAT judgment dated 31.03.2009. However these submissions have been recently endorsed by CAG in its report dated 08.11.2010 and also in Supreme Court Order dated 16.12.2010:

DUAL ALLOCATION OF SPECTRUM NOT PERMISSIBLE

COAI's submission:

"It is submitted at the outset that Crossover allotment of spectrum is not permitted under the present policy and licensing regime and both DoT and TRAI have admitted so. However, DoT has recently and wrongly decided to permit both GSM and CDMA spectrum under the same license in order to benefit one set of operators:"

TDSAT, 31 March 2009:

"We hold that a reading of the NTP-99 document and the licence conditions reveals that the concept of dual technology is not a new concept and that this is contained in the above documents. "

C&AG Report, 8 November 2010:

u ... combination of technologies (CDMA, GSM and/or any other) under the same licence was not permitted in 2006 when Reliance, etc applied for permission for using GSM... "

Therefore, the DoT did not accept their request. After receipt of the recommendations of TRAI, a decision was taken by the DoT on 17.10.2007 for use of alternate technology albeit without referring the matter to full Telecom Commission. DoT issued press release on 19.10.2007 on the issue of use of alternate technology.

However, a day before that i.e., 18.10.2007, three operators who had applied for use of alternate technology were given 'in principle' approval for using GSM technology. "

Supreme Court, 16 December 2010:

"three of the four companies, which were providing CDMA based mobile services under UAS licence had applied in 2006 for permission to use GSM technology. At the relevant time, combination of technologies (CDMA, GSM and/or any other) was not permitted.

**ILLEGAL AND UNFAIR POLICY DECISION OF 2007 DUE TO BYPASS OF DUE
PROCESS & UNDUE HASTE**

COAI's submission:

"It appears that DoT took a decision on or prior to 18.10.2007 to permit allotment of both GSM and CDMA spectrum under the same license. Pursuant thereto, vide its letter dated 18.10.2007 addressed to some CDMA operators, DoT wrongly issued an in principle approval to use GSM technology in addition to CDMA technology under the same license.

This was, done in a completely non-transparent manner and without informing the world at large or even, the directly concerned /impacted parties, viz. the, GSM operators. Nay DoT also allowed / gave full opportunity to the said CDMA operators to even deposit the entry fee towards the same again without informing the world at large or even the directly concerned/impacted parties, viz. the GSM operators. DoT has thus acted with undue and unseemly haste in a bid to advantaging one set of operators over the others, thus* denying equal opportunity and level playing field to GSM operators. The unseemly haste on the part of DoT is further evidenced by the fact that the in-principle approval has been issued to the CDMA operators even before the licenses were amended in order to make the decision a fait accompli.

It is verily believed that DoT called for a Telecom Commission meeting on 18.10.2007 which got concluded at about 6:00 PM. It is also verily believed that the said in-principle approval was issued to the CDMA operators at about 6:30 PM. By the next morning, i.e. on 19.10.2007, one large CDMA operator submitted the necessary fee as also a detailed application for assignment of frequency and other parameters in duly completed formats.

It was only after all the above activities were concluded, including the payment of the said entry fee as also acceptance of application for assignment of frequency, that the DoT decided to inform the world at large and that too, only through a Press Release posted on its website on 19.10.2007. It may also be noted that no detailed guidelines have yet been issued by DoT on the subject matter except the said Press Release. The above actions of DoT clearly smack of legal mala fide.

Without prejudice to our submissions that such cross technology allocations are not permissible, it is also submitted that the entire manner in which this has been actioned by the DoT demonstrates a complete bypass of all due process. “

TDSAT, 31 March 2009:

“So long as the decision is communicated by the competent authority in the Government, it (2007) is not a matter for adjudication whether such a decision has been taken with or without the approval of the Cabinet. Secondly, and more importantly, as brought out above, technology neutrality is not a concept that has been newly introduced. It is a concept that already exists. So the General Clauses Act is not attracted in this case. Besides, neither the letter dated 18.10.2007 addressed to the 3rd Respondent by DOT nor the Press Release dated 19.10.2007 speak of technology neutrality as a new decision. In fact, Para 2 clearly states that the unified (Telecom) Access Services (UAS) licences are technology neutral. It only speaks of spectrum allocation including for the alternate technology. The learned counsel for Petitioner laid emphasis on Para 4 of the Press Release which states that "it has also been decided that the existing private UAS Licensees may be permitted to expand their existing networks by using alternate wireless technology i. e. the present UAS Licensee who is using GSM technology for wireless access may be permitted to use CDMA technology and vice versa. " He sought to lay emphasis on the word 'permitted' to state that it is a case of fresh licence or an amendment to the existing licence. This is taking a too technical view of the matter. Firstly, a Press Release is only meant to give information to the public and is not a legal document. Secondly, it is common knowledge that administrative use of language is different from legal use of the language. For these reasons, we reject the contentions of the learned counsel for Petitioner and hold that in taking the decision reflected in the letter dated 18.10.2007 or the Press Release dated 19.10.2007, no impropriety was committed by the DOT regarding impropriety of decision- making.

"We hold that in taking the decision reflected in the letter dated 18.10.2007 or the Press Release dated 19.10.2007, no impropriety was committed by DOT We do not find any ground to level mala fide intention on the part of DOT and accordingly hold that the issue of early completion of formalities is not a matter that would require intervention at our level. "

C&AG Report, 8 November 2010:

4.2 The recommendations of the TRAI 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 us 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.

4.8.1 Undue Benefits to Reliance Communications Limited

Based on the recommendations of TRAI the decision for use of alternate technology was taken for the first time by the Do T 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 Release dated 19.10.2007. 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 Rs. 1645 crore for 20 service areas through their sister concern Reliance Infocomm Ltd. Acceptance of bank drafts for RS.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 VAS licences and whose applications were kept pending on the grounds of non-availability of spectrum. Spectrum under dual technology was allotted to HFCL Inforel 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.

4.8.2 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.

*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.*

TRAI's RECOMMENDATION ON CONTINGENT ROLLOUT OBLIGATIONS FOR CROSSOVER ALLOTMENT OF SPECTRUM
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COAI's submission:

"Respondent has not accepted TRAI recommendation for imposing contingent rollout obligations in case of crossover allocation of spectrum."

TDSAT, 31 March 2009:

"The letter dated 18.10.2007 addressed to Ms Reliance Communications Ltd. states that "the company shall meet the roll-out obligations and other stipulations of the VAS licence (s)." In the light of this, we do not agree with the Petitioners' contention that the DoT has disregarded the Recommendations of TRAI in respect of contingent roll-out obligation."

TRAI Letter to DoT, 18 November 2010:

9. ... Regarding licensees operating with dual technologies under the same license, TRAI had in August 2007, recommended the imposition of contingent rollout obligation. While Do T has accepted this recommendation, the requisite amendment(s) is yet to be issued. TRAI reminded DoT about this in May 2008 and March 2010. DoT is once again requested to issue the requisite amendments.

Government's statements on the floor of the Parliament on spectrum beyond 6.2MHz:

1. *... Additional spectrum beyond initial spectrum is allotted as per guidelines / orders / criteria in force at the time of such allotment subject to availability. Lok Sabha Question No. 5365 answered on 13th Dec.2010*
2. *.. Additional spectrum beyond the initial spectrum is considered for allocation after ensuring optimal and efficient utilization of the already allotted spectrum, taking into account all types of traffic and subscriber criteria evolved from time to time... Lok Sabha question no. 1982 answered on 22nd November 2010*
3. *...The latest order issued in January 2008 (by DoT) in this regard are based on TRAI recommendations. These orders of 2006 and 2008 provide criterion for GSM spectrum allotment upto 15MHz. Lok Sabha Question No. 4883 answered on 28th April 2008*
4. *....The UASL has a provision for allotment of additional spectrum for GSM as well as CDMA operators subject to optimum usage, justification and availability. Additional percentage of revenue share is levied for such additional spectrum. Lok Sabha question no. 2753 answered on 3rd Sept. 2007*
5. *"... Operators are levied additional 1% (3% of AGR) for spectrum allotted between 4.4MHz to 6.2MHz and an additional 1% of AGR for spectrum allotted between 6.2MHz to 10MHz (4% of AGR) prior to 1st April 2010. Current spectrum charges have been revised w.e.f 1st April 2010....." Lok Sabha question no. 1982 answered on 22nd November 2010*
6. *".... Increased rate of revenue share is levied towards spectrum charges on total spectrum which includes additional spectrum ..." Rajya Sabha Question No. 2188 answered on 20th March 2008*
7. *"....Spectrum charges are levied from GSM operators on revenue share basis. Increased rate of revenue share percentage is levied for total spectrum, which includes initial as well as additional spectrum.." Rajya Sabha Question No. 1423 answered on 13th March 2008*

Government affidavit before TDSAT (Petition 319 of 2007)

1. *"... allotments of spectrum were made in accordance with the norms prevailing at the stage of allotment. ..."*

2. *"...to achieve the objectives of continued growth of telecom services, further spectrum beyond 2 x 6.2 MHz has also been allotted to various operators, as per guidelines/ orders/ criteria in force at the time of such allotment. These criteria have been formulated and appropriately reviewed periodically, taking into account TRAI recommendations and development of technological features, etc."*
3. *"... no spectrum in excess of what was permissible has been granted to any mobile operator."*
4. *".....The issue of criteria, allotment of additional spectrum and pricing are the part of normal spectrum management functions and accordingly orders in this regard were issued as a part of normal procedure...."*
5. *".....The additional spectrum to GSM operators, beyond the initial spectrum had been allotted, as per the guidelines, orders and subscriber based edibility criteria prevalent on the respective dates of allotment. The allotments were made subject to availability of spectrum as well as enabling provision enshrined in the service License Agreement...."*