

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 (Lols) only to applications received up to 25.09.2007. This was ostensibly to avoid legal implications in view of the shortage of spectrum for GSM services.

(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 Lols simultaneously on a single day, viz. 10th January 2008. A notice was issued through a press release giving less than an hour to collect the same. This decision to issue Lols simultaneously to all applicants was taken at the level of the Minister. As per the FCFS policy being followed those who were issued Lols were given 15 days to fulfill the conditions. This included submission of a Performance Bank Guarantee (PBG) and a Financial Bank Guarantee (FBG). By changing the FCFS criteria, some licensees, who could proactively anticipate such procedural changes were ready with the Demand Drafts drawn on dates prior to the notification of cut off date by DoT and could avail the benefit of first right to allocation of spectrum, having jumped the queue. The entire process followed lacked transparency and objectivity and has eroded the credibility of DoT.

(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
Total	67364	176645	69626	57666