

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

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.

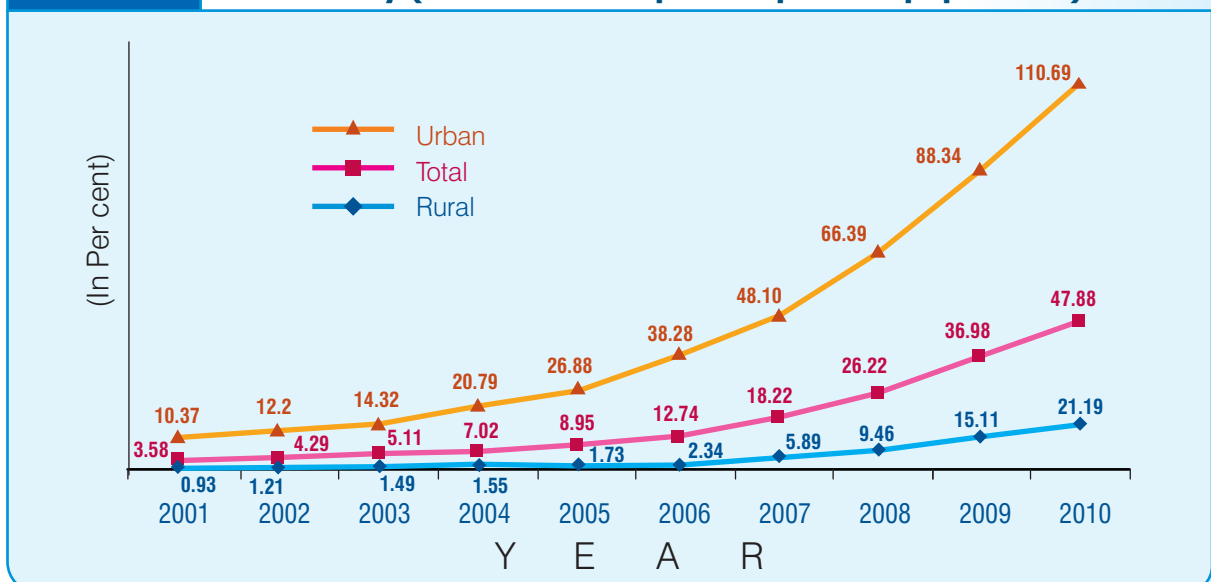
On 2 November 2007, Hon'ble Prime Minister wrote to Hon'ble MoC&IT that given the back drop of inadequate spectrum and large number of applications received for fresh licences, DoT should consider (i) introduction of a transparent methodology of auction, wherever legally and technically feasible and (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 Lol 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.

* 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

* 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"> ■ 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; ■ Suppressed the non - registration of alteration in the main object clause of MOA by ROC; ■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 10 crore; ■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007; ■ Registration of the resolution effecting the increase in the authorised share capital was done on 11 October 2007; ■ Submitted false certificate from Company Secretary in respect of Paid up capital;
2.	Unitech Builders & Estates Pvt. Ltd. (Brand name Uninor)	10 August 2007	24.09.2007	1	<ul style="list-style-type: none"> ■ 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; ■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC;

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"> ■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 10 crore; ■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007; ■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007; ■ Submitted false certificate from Company Secretary in respect of Paid up capital;
3.	Azare Properties Ltd (Brand name Uninor)	1 August 2007	24.09.2007	1	<ul style="list-style-type: none"> ■ 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; ■ Suppressed the non - registration of alteration in the main object clause of MOA; ■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 10 crore; ■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007; ■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007; ■ Submitted false certificate from Company Secretary in respect of Paid up capital ;
4.	Hudson Properties Pvt. Ltd. (Brand name Uninor)	1 August 2007	24.09.2007	1	<ul style="list-style-type: none"> ■ 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; ■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC; ■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 10 crore; ■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007;

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"> ■ Registration of resolution effecting increase in the authorised share capital was done on 8 October 2007; ■ Submitted false certificate from Company Secretary in respect of Paid up capital ;
5.	Nahan Properties Pvt. Ltd. (Brand name Uninor)	16 August 2007	24.09.2007	6	<ul style="list-style-type: none"> ■ 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; ■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC; ■ Authorised share capital was only ₹ 5 lakh against ₹ 22 crore; ■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007; ■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007; ■ Submitted false certificate from Company Secretary in respect of Paid up capital;
6.	Adonis Projects Pvt. Ltd. (Brand name Uninor)	28 August 2007	24.09.2007	6	<ul style="list-style-type: none"> ■ 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; ■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC; ■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 26 crore; ■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007; ■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007; ■ Submitted false certificate from Company Secretary in respect of Paid up capital;

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"> ■ 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; ■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC; ■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 25 crore; ■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007; ■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007; ■ Submitted false certificate from Company Secretary in respect of Paid up capital ;
8.	Volga Properties Pvt. Ltd. (Brand name Uninor)	1 September 2007	24.09.2007	3	<ul style="list-style-type: none"> ■ 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; ■ Suppressed the conditional registration of alteration in the main object clause of MOA by ROC; ■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 25 crore; ■ Deposited the stamp duties for increase in the authorised share capital on 3 Oct,2007; ■ Registration of the resolution effecting increase in the authorised share capital was done on 8 October 2007 ■ Submitted false certificate from Company Secretary in respect of Paid up capital

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"> ■ 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; ■ 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; ■ Suppressed the non - registration of alteration in the main object clause of MOA by ROC; ■ Authorised share capital was only ₹ 5.20 crore against the requirement of ₹ 128 crore; ■ Deposited the stamp duties for increase in the authorised share capital on 25 Sept. 2007; ■ Request for Registration of increase in the authorised share capital was submitted on 24 October 2007; ■ Submitted false certificate from Company Secretary re. Paid up capital ;
10.	Allianz Infratech (P) Ltd. (merged with Etisalat DB)	21 December 2006	5/09/2007	2	<ul style="list-style-type: none"> ■ 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; ■ Suppressed the non - registration of alteration in the main object clause of MOA by ROC; ■ Authorised share capital was only ₹ 5 lakh against the requirement of ₹ 8 crore; ■ Deposited the stamp duties for increase in the authorised share capital on 24 December 2007; ■ Form No 5 along with other papers to increase the authorised share capital was submitted in ROC on 27 December 2007 ■ Submitted false certificate from Company Secretary re. Paid up capital ;

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"> ■ Suppressed the non - registration of the resolution effecting alteration in the MOA effecting increase in the authorised share capital by ROC; ■ Authorised share capital was only ₹ 1 lakh against the requirement of ₹ 138 crore; ■ Increased authorised share capital on the day preceding the date of submission of application through a resolution; ■ 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;
12.	S Tel Ltd.	19 June 2007	07/07/2007	6	<ul style="list-style-type: none"> ■ Suppressed the non - registration of alteration in the MOA/AOA regarding increase in the authorised share capital ■ Authorised share capital was only ₹ 10 lakh against the requirement of ₹ 18 crore as on the date of application; ■ Submitted the form for Registration of the resolution effecting the increase in the authorised share capital on 3 August 2007; ■ 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;
13.	Swan Telecom Private Limited (Now Etisalat DB Telecom Private Limited)	13 July 2006	02/03/2007	13	<ul style="list-style-type: none"> ■ 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; ■ 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; ■ Submitted false certificate from Company Secretary re. Paid up capital;

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"> 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.

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%
TOTAL				110,0020,000	100%

(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 Licences 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.

* 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.**