

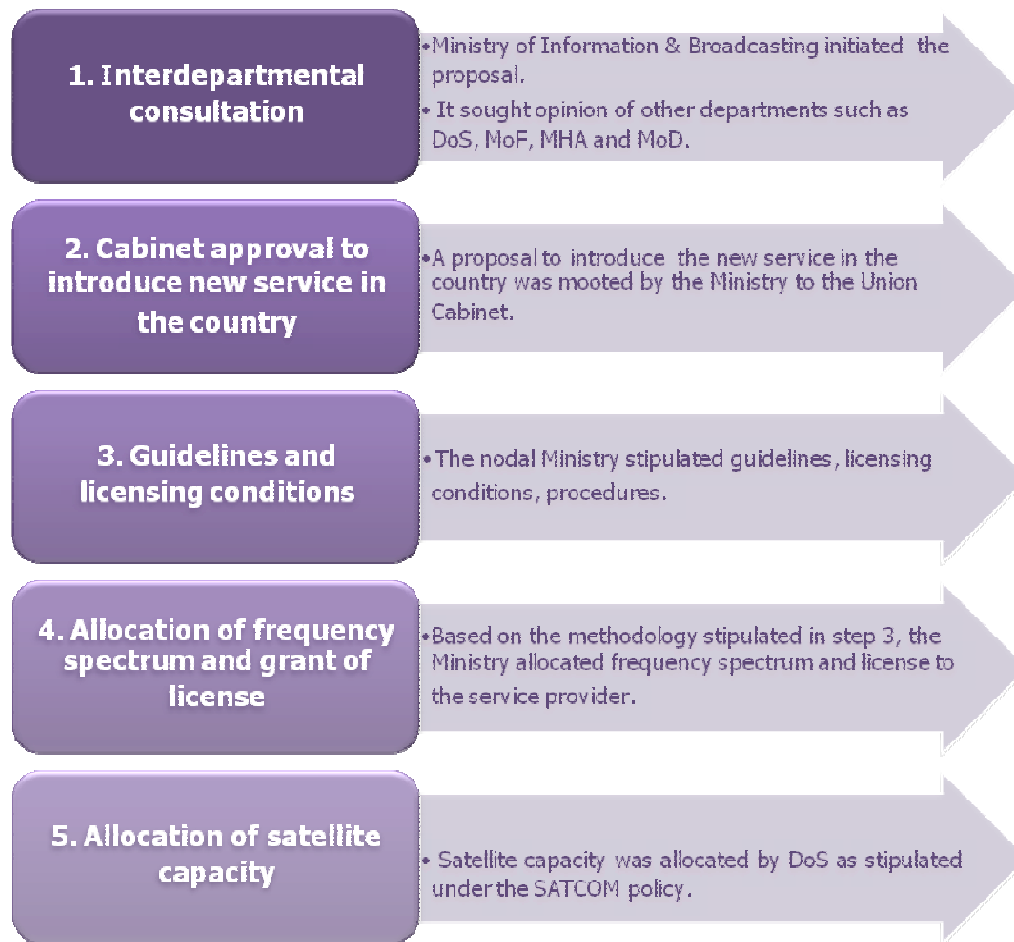
## **Chapter 2 Violation of Policies and Procedures**

### **2.1 The procedure laid down for introduction of a new communication service was violated**

The Allocation of Business Rules, 1961 detail the allocation of business of the Government of India and specify subjects to be dealt with by the Ministries/Departments. According to these Rules, the Department of Telecommunications (DoT) is responsible for policy, licensing and coordination matters relating to telecommunication services, the Ministry of Information & Broadcasting (MIB) is responsible for matters relating to broadcasting in India, the DoS is responsible for all activities connected with space applications and the Ministry of Finance is responsible for financial sanctions relating to all Ministries of the Government of India and appraisal and approval of Plan Investment/expenditure proposals of Central Ministries/Public Sector Undertakings.

As per the Transaction of Business Rules, 1961, when the subject of a case concerns more than one department, no decision is to 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.

Given the fact that a new communication service could be for telecommunications or for broadcasting and could either be satellite-based or terrestrial-based, several Ministries/Departments were involved in the process of introduction of such a service. When the new communication service of DTH was introduced in the country in 2000, it was observed that the following procedure was adopted by the Ministry of Information & Broadcasting:

**Table-1: Steps followed by the Ministry of Information and Broadcasting****What was the violation in the Devas case?**

The proposed Devas services which were a hybrid of telecommunication and broadcasting services, were under the policy domain of DoT and MIB and not under DoS. The role of DoS, which related to activities connected with space applications, was to come into play only after the policy and regulatory frameworks for the new services which were under the domain of DoT and MIB were in place.

In the case of Devas, we observed that:

- Interdepartmental consultations were not in place before entering into the contract for the Devas services.

- Approval from the Union Cabinet to introduce the Devas services in the country was not obtained.
- Guidelines and licensing conditions were not in place before entering into the contract for the Devas services.

**In transponder lease agreements related to DTH services, DoS allocated satellite capacity only after Step 1 to Step 4, as detailed in Table-1, were in place.**

**In the case of Devas, DoS straightaway allocated satellite capacity without following Steps 1 to 4.**

DoS stated in August 2011 that the actual procedure was as follows:

1. DoS allocates transponders, i.e. the space segment capacity to the users at prices stipulated by the department, based on the recommendations of the pricing committee set up as per the SATCOM policy.<sup>1</sup>
2. The users are then expected to seek operating licences from the Department of Telecommunications.
3. The users have to procure service licences from DoT or MIB based on the types of services.
4. The users have to obtain spectrum allocation from the Wireless Program Coordinator of DoT at charges that are specified by them.
5. The users also have to obtain network clearance from the Network Operations and Control Centre of DoT.

DoS further stated that even though the transponders are allocated, it is only after all these licences and clearances are obtained that the services can become operational. In the instant case, only the transponders were proposed to be allocated to Devas under the agreement. They were expected to obtain the licences and permissions from the other authorities before they could commence their services.

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<sup>1</sup> This has been described in para 2.4.

The reply of DoS is not acceptable since DoS outlines the procedure followed in respect of existing communication services. Devas services, however, were new communication services to be introduced for the first time in the country, for which steps 1 to 4 indicated in Table-1 were not in place.

The contention of DoS that Devas was expected to obtain all licences and permissions from the concerned authorities is to be seen in light of Article 3 Clause (c) of the Antrix-Devas agreement which spelled out that “Antrix would be responsible for obtaining all necessary Governmental and regulatory approvals relating to orbital slots and frequency clearances, and funding for the satellite for Devas services”. The clause further provided that Antrix would provide ‘appropriate technical assistance’ to Devas on a best-effort basis for obtaining the required operating licences and regulatory approvals from various Ministries. These terms were, therefore, fairly unambiguous with reference to the hand-holding offered to Devas by Antrix.

## **2.2 Multiple services (broadcasting and telecommunications) were allowed on the same platform**

The Union Cabinet, in March 2001, approved DTH guidelines which, *inter alia*, stipulated that DTH facilities which were broadcasting services, were not to be used for other modes of communication including voice, fax, data communication, internet, etc. (telecommunication services) unless specific licenses for these value-added services had been obtained from the competent authority. The context in which a particular communication service was to operate was clearly spelt out in the approval of the Cabinet.

In this regulatory scenario, Antrix signed an agreement with Devas, authorising new services which were to be a hybrid of telecommunication and broadcasting services offering 4G services, mobile TV services, DTH services etc., on the same platform. This was done without going back to the Cabinet for approval. Such a move clearly contravened the policy approved by the Union Cabinet in 2001.

## **2.3 Approval of the INSAT Coordination Committee not taken**

The INSAT Coordination Committee (ICC) is a high-level multi-departmental control mechanism instituted by the Government in 1977. It coordinates and monitors the implementation of space and ground segments of INSAT projects. ICC consists of Secretaries of six departments, viz., DoS, Department of Economic Affairs, DoT, MIB, Department of Science & Technology and Department of Information Technology. In

addition, Member (Finance) of DoS is also a member of the Committee and the Programme Director of SCNPO of DoS is the Member Secretary of the Committee.

This was a Committee through which interests of these allied sectors, as listed above, were not only being articulated, but also protected. This mechanism was also in line with procedures laid down under the Transaction of Business Rules, 1961 requiring interdepartmental coordination.

The functions of ICC were as follows:-

- Coordinate and monitor the implementation of INSAT projects, both space and ground segments, to ensure efficient and timely execution.
- Coordination at the operational stage with a view to achieving maximum efficiency and utilisation.
- Planning future developments.
- Consideration of problems relating to orbit frequency coordination.
- Setting up a Technical Advisory Group (TAG) to consider and advise on all technical matters influencing more than one component of the system.

In its 61<sup>st</sup> meeting in 2000, ICC had stipulated procedures for allotment of INSAT capacity to private users. These were as follows:-

- INSAT capacity to the non-Government sector should be allotted on non-exclusive basis.
- ICC Secretariat should receive applications for transponder capacity from non-Government users.
- ICC should earmark transponders in INSAT satellites for non-Governmental users as provided under the SATCOM policy.

#### **Violations of procedure in Devas case**

The matter of earmarking the transponders of GSAT-6 and GSAT-6A was never placed before the ICC as the Director, SCNPO did not convene any ICC meeting after June 2004.

The transponders of INSAT satellites, GSAT-6 and GSAT-6A were allocated to Devas on exclusive basis, in January 2005, not on the basis of ICC approval, but on the recommendation of the Dr. K.N. Shankara Committee<sup>2</sup> appointed by Chairman, Antrix/ISRO.

The capacity of the 20 transponders (10 each of GSAT-6 and GSAT-6A) was allocated entirely to Devas. This was in contrast with the extant practice where every client was allocated only a portion of the satellite capacity.

DoS confirmed in August 2011 that the earmarking of transponders was not placed before ICC. It further stated that the allocation of transponders on the two satellites, GSAT-6 and GSAT-6A was such that 90 *per cent* of the capacity was allocated to Devas under the agreement.

The reply of DoS that 90 *per cent* of the capacity was allocated to Devas under the agreement is not acceptable for the reason that the satellites were planned exclusively for Devas. The Space Commission's observation in its 117<sup>th</sup> meeting held in July 2010, that there was violation of ICC's principle of 'non-exclusiveness', confirms this point.

DoS, while furnishing information on the action taken, stated (January 2012) that ICC had been reconstituted and had held two meetings.

#### **2.4 The SATCOM Policy was flouted**

The policy framework for satellite communications in India (SATCOM) was approved by the Union Cabinet in June 1997 and its Norms, Guidelines and Procedures for implementation of the policy were approved by the Union Cabinet in January 2000. Some of the enabling provisions of the SATCOM policy were as under:-

- Article 2.3.1: INSAT capacity was to be made available to the commercial sector on sound business lines. i.e., on a 'for profit' basis consistent with the Government policies in the concerned user sectors.
- Article 2.3.2: All the policies regarding the INSAT system were to be determined by the ICC, keeping in view the Cabinet-approved policy framework for satellite communications in India.

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<sup>2</sup> M/s Forge Advisors, USA, an International business consultancy firm, submitted a proposal in April 2004 to DoS proposing to form one Indian Company, namely Devas Multimedia Limited for the introduction of Devas services in the country. Chairman ISRO/ Antrix constituted Dr. K.N. Shankara Committee in May 2004 to examine this proposal, its technical feasibility, risk management, financial and market aspects, time schedule and organisational aspects.

- Articles 2.5.2 & 2.5.3: ICC was to earmark a certain percentage of capacity in the INSAT system for use by non-Government users and evolve procedures for allocation of transponder capacity to non-Government users, taking into account the capacity available and the prevailing situation in the satellite communication market.
- Article 2.6.2: DoS was to evolve suitable, transparent procedures for allotting transponder capacity to the non-Government users in the form of auction, good faith, negotiation, first come first served, or any other equitable method. ICC could review this arrangement at any time as required.
- Article 2.6.5: The use of INSAT capacity by non-Governmental parties was to be based on a formal lease agreement signed between DoS/INSAT and the party, which would spell out the technical, financial, contractual and management clauses.
- Article 2.7: DoS/ INSAT could build in capacity for a non-Governmental party, at its request, based on commercial considerations and if technically feasible, without adversely affecting the capacity for already projected, accepted and funded Government needs. The additional capacity could be for providing services in India or abroad. Such capacity was not to be deemed as part of the INSAT capacity from the Indian regulations points of view unless ICC specifically declared it to be so. However, DoS/ INSAT were to ensure that providing additional capacity to foreign agencies was in accordance with the policies of the Government of India. ICC was to be kept informed of such steps. The commercial and other terms were to be determined by DoS/ INSAT.

#### **Violations of procedure in Devas case**

The satellite capacity of two satellites, viz. GSAT-6 and GSAT-6A was allocated to Devas without following a sound business line and not on a 'for profit' basis.

**DoS flouted the SATCOM Policy and did not follow sound business principles while allocating transponders to a non- Government user.**

There was no evidence that DoS allocated transponders to Devas, taking into account the capacity available and the prevailing situation in the satellite communication market.

Audit found no evidence of a written-down, transparent, equitable transponder allocation policy in place prior to signing of the Antrix-Devas agreement.

Article 2.6.5 of the SATCOM policy was flouted as the transponder lease agreement was signed by Antrix instead of DoS. Antrix replied in March 2011 that Antrix Board had the Secretary, DoS as its Chairman and the Additional Secretary, DoS as one of its members. The reply is not acceptable because DoS represented the Government while Antrix was a commercial entity.

DoS, confirmed in August 2011 that the allocation of transponders on GSAT-6 and GSAT-6A had been done without placing the matter before ICC.

## **2.5 DoS guidelines were contravened**

In June 2001, DoS prescribed the procedure for executing Antrix contracts. According to this, DoS could execute Antrix contracts based on MOUs signed between DoS and Antrix. These guidelines contained detailed control procedures for estimation and expenditure of funds once the MOUs had been signed.

The customer entering into a contract with Antrix was to place funds at its disposal. DoS, on receipt of these funds from Antrix, was to credit the same under the deposit head of account (8443- Civil Deposits) to execute the work of that entity.

Thus, in respect of Antrix contracts, the expenditure was incurred from the Deposit fund. In all projects where Antrix was a signatory to contracts with customers, the costs of the projects were recovered by it through a variety of charges levied on the customers.

### **Violations of procedure in Devas case**

The above guidelines, which laid down the standard operating procedures, were being followed by DoS in respect of all contracts entered into by Antrix. However, an exception was made in the case of Devas.

DoS was planning to spend ₹1254.52 crore from their budget for this Antrix project.

**Funds were provided from the Government budget for the manufacture of a satellite which was to be used exclusively by a non-Government customer.**

## **2.6 Facts were concealed from the Union Cabinet**



DoS submitted a detailed note to the Union Cabinet in November 2005, seeking its approval<sup>3</sup> for realisation of GSAT-6 (for providing multimedia mobile S Band satellite services) at an estimated cost of ₹269 crore under the INSAT programme. Secretary, DoS concealed and misrepresented the following facts from/to the Union Cabinet while seeking financial sanction to incur expenditure from the INSAT budget in November 2005:

- DoS did not indicate in the Cabinet note that it was planning to construct GSAT-6 satellite **as a customer-specific satellite** for Devas. Scrutiny in audit revealed that the project report of GSAT-6 prepared by the ISRO Satellite Centre in March 2005 specifically mentioned that the satellite was **being developed for Devas. However, the summary project report submitted by DoS along with the proposal to the Union Cabinet for approval did not contain the name of Devas.**
- The note submitted by Secretary, DoS to the Union Cabinet in November 2005 indicated that ISRO was already in receipt of '*several firm expressions of interest by service providers*' for utilisation of GSAT-6 satellite capacity on commercial terms. **In reality, DoS had acted upon the proposal of M/s Forge Advisors only. Hence, the statement of "several firm expressions" was incorrect.**

**Antrix had already entered into a transponder lease agreement with Devas in January 2005 for all transponders of this satellite well before Secretary, DoS submitted the note to the Union Cabinet, seeking its approval.**

The total cost of the GSAT-6 satellite, including the launch vehicle and other operational expenditure was estimated at ₹524.40 crore. The entire cost along with appropriate return on investment should have been realised from Devas instead of from the INSAT budget, since it was a customer-specific satellite.

**Customer-specific satellites are, as per extant practice, to be financed by the customer. In the case of Devas, the DoS management was planning to incur the costs from the DoS budget, that is to say, from the national exchequer.**

- Further, while processing the Cabinet Note, the Ministry of Finance sought details of expected revenue from DoS in respect of the GSAT-6 satellite before clearing the

<sup>3</sup> Being the competent authority to approve programmes costing more than ₹100 crore (revised to ₹150 crore from November 2007).

proposal to incur expenditure from the INSAT Programme. DoS replied to the Finance Ministry in September 2005 that the revenue expected by the Department by lease of transponders from GSAT-6, “as per the existing MOUs with users so far”, was ₹51.70 crore per annum, totalling ₹620.40 crore during the expected 12-year life period of the satellite.

**By using the words ‘several firm expressions of interest by service providers’ and ‘existing MoUs with users’ DoS conveyed the impression to the Cabinet and the Finance Ministry respectively that it had signed MoUs with different users for use of this satellite.**

**In reality, it had signed an agreement with only one user, i.e. Devas, for all transponders of the satellite.**

- The fact that launch of the two satellites, i.e. GSAT-6 and GSAT-6A would entail an expenditure of ₹1254.52 crore, against which the realisation of revenue would be ₹1120.76 crore, was also not brought to the notice of the Union Cabinet, though it was envisaged in the agreement between Antrix and Devas.

## 2.7 DoS avoided the financial sanction of the Union Cabinet for the GSAT-6A satellite

As per the guidelines for approval of Plan projects issued in November 2007 by the Ministry of Finance, approvals for projects involving a cost of over ₹150 crore are to be obtained from the Cabinet. SCNPO submitted a detailed note in October 2009 to the Space Commission seeking its approval<sup>4</sup> for taking up a multimedia mobile S-Band satellite mission (GSAT-6A) at an estimated cost of ₹147 crore, under the INSAT programme. DoS justified the launch of this satellite by indicating that in view of the increase in demand for multimedia services, a follow-on satellite was proposed to augment GSAT-6 to cater to the demand in the sector.

Detailed scrutiny of the costing of the GSAT-6A satellite at ₹147 crore by Audit revealed that the proposed expenditure of GSAT-6A was not like for like when compared to that of GSAT-6 (₹269 crore), even though both the satellites had similar configurations. As such, it appears that **DoS had reduced the cost of GSAT-6A satellite to avoid obtaining the**

<sup>4</sup> The Space Commission is the competent authority to approve programmes costing less than ₹150 crore w.e.f November 2007.

**approval of the Union Cabinet.** Component -wise differences in the cost of GSAT-6 and GSAT-6A has been detailed below:

**Table-2: Cost comparison of GSAT- 6 and GSAT- 6A**

(₹ in crore)

No	Description	GSAT-6	GSAT-6A	Difference	Remarks
(1)	(2)	(3)	(4)	(5)=(3)-(4)	(6)
1	Payload	64	58	6	6A was to be realised subsequently. Therefore, given inflationary trends the cost of payload of GSAT-6A should have been higher.
2	Structure	4.5	4.5	0	
3	Thermal	5	5	0	
4	Mechanism	3.5	3.5	0	
5	Composites	3	3	0	
6	TTC-BB	2	2	0	
7	AOCE	5.5	5.5	0	
8	TTC-RF	1.5	1.5	0	
9	Power Electronics	2.5	2.5	0	
10	Battery	6	4	2	6A was to be realised subsequently. Therefore, given inflationary trends the cost of batteries of GSAT-6A should have been higher.
11	Solar Array	8	8	0	
12	Inertial Systems	10	8	2	6A was to be realised subsequently. Therefore, given inflationary trends the cost of inertial systems of GSAT-6A should have been higher.
13	Sensors	3	3	0	
14	Propulsion	2	2	0	
15	AIT	5	5	0	
16	Mission	3.5	3.5	0	
17	R&QA	2	2	0	
18	MCF	4	4	0	

19	Project Management	15	7	8	6A was to be realised subsequently. Therefore, given inflationary trends the cost of project management of GSAT-6A should have been higher.
20	Salary & Administration	20	15	5	6A was to be realised subsequently. Therefore, given inflationary trends the cost of salary component of GSAT-6A should have been higher.
21	Insurance	34		34	The cost of insurance was deleted on the plea that Devas would bear the same. It is evident that a selective approach was applied towards bearing the cost of insurance in the case of the two satellites.
22	Pre-investment for critical components of ground spare	65		65	
23	<b>Total</b>	<b>269</b>	<b>147</b>	<b>122</b>	<b>Total under costing of GSAT-6A worked out to be at least ₹122 crore.</b>

As can be seen from the table above, the lower cost of GSAT-6A was mainly due to exclusion of costs relating to: insurance (₹34 crore) and lower cost on account of project management (₹8 crore), salary and administration (₹5 crore), payload (₹6 crore) and battery/inertial systems (₹4 crore). The gross expenditure to be incurred for GSAT-6A would have been well above ₹150 crore had all the elements been included.

DoS replied in August 2011 that a total sum of ₹65 crore was provided for GSAT-6 for pre-investment of critical components for ground spares. DoS added that this amount included components for GSAT-6A satellite also.

The reply of DoS needs to be viewed in the light of the fact that even if the critical components for ground spares of ₹65 crore are excluded, the cost of GSAT-6A would nevertheless still remain under-costed by a sum of ₹57 crore and approval of the Union Cabinet was mandatory in this case.

**By exclusion of certain cost components, DoS was able to avoid the mandatory financial sanction of the Union Cabinet for the GSAT-6A satellite.**

## 2.8 DoS did not bring crucial facts to the notice of the Space Commission

The Space Commission is responsible for formulating the policies relating to the development and application of space science. It oversees the implementation of the Indian space programme in its meetings, where members discuss issues based on reports submitted by the Chairman of the Space Commission (who is Secretary DoS and Chairman, ISRO). Most importantly, it formulates policies for space programmes under (i) satellite communication (ii) earth observation (remote sensing) and (iii) space science.

A crucial aspect of the Space Commission's role is its financial oversight over the DoS budget and of providing specific financial sanctions to individual projects of ISRO. It is the competent authority for approval of all projects whose values are less than ₹150 crore. Projects costing higher than ₹150 crore are routed through the Space Commission and require the approval of the Cabinet.

### **Issues in the approval of GSAT-6 and GSAT-6A from Space Commission**

The GSAT-6 Project proposal was approved in the 104<sup>th</sup> meeting of the Space Commission in May 2005. Extracts of the minutes of that meeting revealed that the proposal presented by DoS highlighted the capabilities of GSAT-6, its benefits to users and its total cost.

A review of the agenda note for the 104<sup>th</sup> meeting of the Space Commission revealed that DoS did not bring to the notice of the Space Commission that GSAT-6 was a satellite being realised for the use of Devas, a single private customer for commercial purposes, and that its cost was being borne, not by the customer, as per the extant rules, but from the Government budget. **DoS did not bring to the notice of the Space Commission the fact that four months before the matter was placed before the Commission, it had already signed an agreement with Devas in January 2005, wherein it had committed space segment capacity of two satellites to Devas.**

In the case of GSAT-6A, SCNPO submitted a detailed note in October 2009 to the Space Commission, seeking its approval for taking up a multimedia mobile S-Band satellite mission (GSAT-6A) at an estimated cost of ₹147 crore under the INSAT programme. DoS justified the launch of this satellite by indicating that in view of the increase in demand for multimedia services, a follow-on satellite was proposed to augment GSAT-6 to cater to the demand in the sector.

It was noticed from the agenda note prepared for the 114<sup>th</sup> meeting and the minutes of the said meeting that DoS had failed to inform the Space Commission that the GSAT-6A satellite was being designed and manufactured for the sole use of Devas.

DoS misled the Space Commission by stating that 'In view of the increasing demand for multimedia services, it is proposed to have one more multimedia satellite GSAT-6A which will augment the multimedia services off GSAT-6 and to cater to the increasing consumer requirements of providing entertainment and information services to mobile units.'

The agenda note did not contain any comparison of the costs of GSAT-6 and GSAT-6A since such a comparison would have revealed how the latter had been ingeniously costed as to be brought within the ambit of the Space Commission's financial competence.

While furnishing a response on the action taken, DoS stated (January 2012) that meetings of the Space Commission would be convened at least once in a quarter and agenda notes would be sent two weeks in advance of the meetings, after incorporating the comments of the Member, Finance of the Space Commission. DoS also stated that matters relating to Antrix would be reviewed by the Commission at least twice in a year and all project proposals put up for the approval of the Space Commission would be reviewed by a Standing Project Appraisal Committee.

**The Space Commission approved two satellite missions at a cost of ₹416 crore. It is, however, not on record whether the Commission was aware that the two satellites were being designed, developed and launched from Government funds for a single customer.**

## **2.9 DoS flouted International Telecommunication Union conventions and bypassed DoT**

Internationally, as per the ITU convention (World Radio Conference 2000), to which India is a signatory, it was decided to use the 2.6 GHz band (2.5 GHz to 2.69 GHz of 190 MHz) for mobile broadband services, considering the world-wide importance of this band for terrestrial fixed and mobile services. The band provides an opportunity to meet the rapidly rising demand for capacity to deliver mobile broadband services on a widespread and common basis across the world. This helps to achieve the following:-

- The direct economic benefits of economies of scale
- Ease of roaming
- Interoperability of services on a global basis
- A substantial amount of spectrum (190 MHz)

WRC 2007 imposes technical conditions because it seeks to restrict the usage of the 2.6 GHz band for terrestrial mobile broadband services only. Hence, the 2.6 GHz band is now in a unique position to be exploited as a common band for commercial terrestrial mobile broadband access services on a global basis.

Most of the developed economies in the world had auctioned or were in the process of auctioning this valuable 2.6 GHz band for the mobile broadband services. In India, due to the heavy demand for 3G spectrum in the market, the Government of India auctioned 3G spectrum in April-May 2010, ranging from 1959 MHz to 1979 MHz and earned revenue of nearly ₹67,719 crore towards entry fees for 20 MHz. Further, in the Broadband Wireless Access spectrum auction, DoT had earned a revenue of ₹38,543 crore.

For the Devas service, DoS earmarked 70 MHz of S Band spectrum in the frequency bands of 2560-2590 MHz<sup>5</sup>, 2600-2630 MHz and 2670-2680 MHz for both telecommunication and broadcasting services. DoS/Antrix committed this frequency spectrum without obtaining the approval of the Wireless Planning & Coordination (WPC) wing of DoT, which is the custodian for terrestrial-based telecommunication services in the country.

According to the ITU Radio Regulations, the use of Mobile Satellite Service in the 2655-2690 MHz and 2500-2535 MHz bands is restricted to national transmission only. This was also reiterated by DoT in its reply of July 2010 to DoS, wherein it was stated that the spectrum planned by DoS for strategic use, was not to be shared with commercial applications. Out of this 10 MHz, 2670 -2680 MHz was earmarked for Devas against this regulation. DoS/ ISRO is yet to furnish reasons for the earmarking of MSS spectrum reserved for strategic purposes to Devas.

- Due to pressure for more S-Band spectrum for mobile broadband services, DoT had requested DoS in July 2008 to consider providing the frequency spectrum available with the latter. Director, SCNPO indicated to the WPC in September 2008, that 5 MHz broadcast satellite service spectrum in the range 2550-2555 was already in use by All India Radio (AIR). In reality, 2550-2600 MHz had actually been earmarked for Devas in 2005 itself. Similarly, the Chairman ISRO had also indicated to DoT in August 2008 that the S-Band satellite of ISRO would be used for different applications by different customers when the same had already been earmarked on exclusive basis to Devas.

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<sup>5</sup> The frequency band earmarked in the Antrix-Devas agreement was subsequently changed to 2550-2600 MHz in the proposal seeking financial sanction of Union Cabinet for GSAT-6 satellite.

DoS stated in August 2011, that it did not allocate spectrum and that this was done only by DoT. As indicated, the onus for obtaining frequency clearances in the agreement rested with Antrix. The fact, however, remained that 70 MHz of the S-band spectrum had been earmarked for Devas in the Antrix-Devas agreement.

**DoS misled DoT regarding actual use of spectrum in the S-Band. In July 2008, it stated that the spectrum was in use by AIR. In August 2008, it stated that the spectrum was reserved for different users.**

**The truth was that DoS concealed the name of Devas from DoT, as also the fact that in both instances, spectrum had been reserved for Devas, a private operator.**

#### **2.10 DoS did not get the Antrix-Devas Agreement vetted by Ministry of Law and by Member Finance (Space Commission)**

It was seen that the terms of the transponder lease agreements (TLAs) were to be specific to the services for which transponders were leased, whether it was for VSAT, TV, DSNG or DTH services. This was so because the services, licensing and regulatory arrangements/mechanisms were peculiar to each service. These TLAs were to be approved specifically for each service by the Ministries of Law and Finance.

The agreement template used in the Antrix-Devas agreement was different. It was not approved by the Ministry of Law or by the Member (Finance) of Space Commission who is the representative of the Ministry of Finance in DoS. SCNPO replied in April 2011 that the template approved by Ministry of Law in the transponder lease agreement for the lease of the satellite capacity of INSAT 2E to INTELSAT, an international organisation for its services around the globe, was being used for other lease agreements. This reply must be viewed in light of the fact that the formats of transponder lease agreements were service-specific and were to be formulated differently for different satellite-based communication services. Moreover, reference to the Ministry of Law was not just a pro forma procedure but a control mechanism to guarantee protection of national interest.

DoS confirmed in August 2011 that the Antrix-Devas Agreement was not vetted by the Ministry of Law.

**DoS bypassed important controls in the form of vetting of the transponder lease agreement by the Ministry of Law and the Member (Finance) of the Space Commission.**



**2.11 Devas did not possess the requisite permissions to operate the service for which the Antrix-Devas agreement had been signed**

DoT is the authority for granting licences for operating internet services. TRAI as the regulator also grants clearances for this activity. Uplinking/ downlinking guidelines for internet (data, audio and video) of Indian satellites have not yet been framed in the country. As such, approvals/ licences can be obtained/ issued only when the guidelines have been framed.

Devas secured an All-India Internet Service Provider's Licence in May 2008. This licence could be used for internet access and internet telephony but not to uplink/downlink through satellite. This licence in the possession of Devas was not specific to the hybrid S-DMB service proposed by Devas.

This position was reiterated by the TAG sub-committee in its 129<sup>th</sup> meeting of January 2009 which went into the issues relating to the Devas experimental plan. The sub-committee observed that Voice and Virtual Private Networks proposed in the Devas services would not be permitted under the licence currently held by it.

**Devas was ineligible to provide the hybrid services planned by it as it possessed neither a licence from the approving authority, nor a clearance from the regulator.**