

CHAPTER-II

DEPARTMENT OF TELECOMMUNICATIONS

2.1 Subscriber verification by Telecom Service Providers

2.1.1 Introduction

Over the last two decades, telecom sector has seen a phenomenal growth especially in the mobile segment. The sector continued to register an impressive growth during the last five years i.e. 2007-08 to 2011-12. During the period, the number of telephone subscribers increased from 30.05 crore in 2007-08 to 95.13 crore in 2011-12, registering a growth of 216 *per cent*. While the wireless subscriber base increased by 65.80 crore, the wire line subscriber base recorded a decline of 72 lakh during the period. The wireless segment continued to dominate with a total base of 91.91 crore connections as of March 2012. The overall telecom growth during the years 2007-08 to 2011-12 is indicated in the Table-1 given below:

Table-1
Telecom growth during the years 2007-08 to 2011-12

(Figures in crore)

Years	Wire-line Subscribers	Wireless Subscribers	Total Subscribers
2007-08	3.94	26.11	30.05
2008-09	3.80	39.17	42.97
2009-10	3.70	58.43	62.13
2010-11	3.47	81.16	84.63
2011-12	3.22	91.91	95.13

(Source: Annual Reports of TRAI and DoT)

In the wire line segment, the state owned Public Sector Undertaking, Bharat Sanchar Nigam Limited (BSNL) had a subscriber base of 2.25 crore as of March 2012 which accounted for nearly 70 *per cent* of the market share. In the wireless segment seven¹ major service providers with a subscriber base of 84.03 crore were holding 91 *per cent* of the market share as of March 2012.

Easy access to telecommunication facilities in India, especially in the mobile segment, has also led to increased threat of potential misuse of telecom connections for anti-

¹ Aircel, Bharti Airtel, BSNL, Idea cellular, Reliance Communication, Tata Teleservices and Vodafone

national activities. Viewed against this back drop, complete verification of the subscribers and adequate control of government agencies over telecom service providers assumes special significance.

2.1.2 Internal Control by DoT

2.1.2.1 Creation of Telecom Enforcement, Resource and Monitoring (TERM) Cells

With the increase in the number of telecom operators in the country, the Government felt the need for the setting up of a competent authority in all the license service areas and large telecom districts of the country, in order to ensure that service providers adhere to the license conditions and also to ensure compliance of telecom network security issues. Keeping this objective in view, DoT established 34 Telecom Enforcement, Resource and Monitoring (TERM) Cells in August 2008 (erstwhile Vigilance Telecom Monitoring Cells established in 2004 and renamed as TERM Cells in August 2008). Amongst other things, TERM Cells were required to monitor the verification of subscribers by the service providers in accordance with DoT instructions issued from time to time and terms and conditions of the License Agreement. This was to be done by the TERM Cells through audit verification of Customer Acquisition Forms (CAFs). In case of non-compliance/defective CAFs, TERM Cells were required to impose penalty on defaulting service providers.

2.1.2.2 Instructions issued by DoT on Subscriber Verification from time to time

The Department of Telecommunications (DoT) in June 2003, in the interest of national security, issued guidelines for utmost vigilance on the part of telecom operators while providing telephone connections. Thereafter DoT issued instructions from time to time for implementation of 100 *per cent* subscriber verification. The orders issued by DoT from November 2004 are as below:

November 2004 – DoT instructed all the Service providers that no telephone connection should be given without proper verification of bonafides and addresses of the customers.

May 2005 – It was emphasized that sale of SIM cards/connections without proper identity verification of subscriber should not be done.

November 2006 – Imposed ban on sale of pre-activated SIM cards without verification of subscriber. It was also instructed that the authorized person at the point of sale shall record in the application form that he has seen the subscriber and verified the document with the original.

April 2007 – DoT introduced a penalty of ₹1000 per violation of subscriber verification found during checks by TERM Cells.

June 2007 – DoT issued guidelines regarding subscriber verification to be followed by Telecom Enforcement Resource and Monitoring (TERM) Cells. The sample size to be checked every month by TERM Cell was fixed at 0.02 *per cent* of the total subscriber base of each service provider.

April 2008 – The percentage check by TERM Cell was increased to 0.1 *per cent*.

December 2008 – As the service providers were not complying with the requirement of subscriber verification, the penalty was enhanced based on graded scales.

September 2009 – DoT instructed re-verification of 100 *per cent* mobile subscribers by the service providers within a time period of one year. Further all the customer verification forms were to be scanned and uploaded on the service provider's website for password controlled access by TERM Cells.

October 2009 – DoT gave a list of documents acceptable as proof of identity and proof of address.

February 2011 – DoT issued clarifications regarding scheme of financial penalty in respect of subscriber verification failure cases.

2.1.2.3 Imposition of Penalty by DoT

In November 2006, DoT provided for imposition of penalty at the rate of ₹1000 per violation of subscriber number verification after March 2007. The quantum of penalty was revised (April 2009) into a graded system whereby the maximum amount of penalty was enhanced up to ₹50,000 per unverified subscriber.

Thus, DoT's instructions on the subject were comprehensive and sought to ensure complete subscriber verification through (i) completeness of CAFs (ii) obtaining proof of identity/address of customers with photo identification (iii) certification from an authorized person at the point of sale that he/she had been personally seen (iv) cross verification of subscriber data from original CAFs and (v) storage of the CAFs in electronic form for continued monitoring. The system of imposition and collection of penalties was meant to prove as an effective deterrent for the service providers to progressively tighten their verification procedures and increase compliance.

2.1.3 Scope of Audit

We conducted the audit during July-August 2012 with a view to assessing the role and effectiveness of DoT in implementation of instructions issued till February 2011 regarding mobile subscriber verification by the seven² major service providers in India for the period 2007-08 to 2011-12. Audit findings were issued to the Ministry in September 2012 and the reply of the Ministry was received in February 2013.

2.1.4 Audit Objectives

The audit was conducted to evaluate as to whether:

- 100 *per cent* verification was done by the service providers for addressing concerns relating to National Security as per instructions given by DoT from time to time.
- TERM Cells conducted adequate audit checks.
- Penalty was levied and recovered from service providers.
- Efficient and effective control systems were in place to monitor subscriber verification by the service providers.

2.1.5 Sources of Audit Criteria

The sources of main audit criteria were:

- Instructions of DoT/Reports of TERM Cells (Telecom Enforcement, Resource and Monitoring Cell).
- Guidelines issued by DoT for TERM Cells.
- Relevant/applicable terms and conditions of License Agreement signed with Telecom Operators.

2.1.6 Audit Findings

Audit of TERM Cells and their working disclosed that the minimum sample size of 0.1 *per cent* of total subscribers base of each operator as required was not checked by the TERM Cells, realization of penalty levied by TERM Cells was poor, surprise checks conducted by TERM Cells in fact uncovered, higher non-compliance by service providers

² Aircel, Bharti Airtel, BSNL, Idea cellular, Reliance Communication, Tata Teleservices and Vodafone

besides delay in implementation of TDSAT judgment and consequent delays in imposition of penalty. All these factors adversely impacted the achievement of 100 *per cent* verification of subscribers by the service providers. These audit findings are brought out in the succeeding paragraphs:

2.1.6.1 Non-verification of 4.59 crore subscribers

DoT had declared in its Annual Report 2011-12, that mobile subscriber verification audit conducted by TERM Cells in the field, had resulted in enhanced compliance to subscriber verification by the service providers from 80 *per cent* to approximately 95 *per cent* during the year 2011-2012. The mobile subscriber base was 91.91 crore on March 2012. Given that the mobile subscriber base was 91.91 crore, and if the percentage of compliance to verification as 95 *per cent* is to be accepted in full, even then a significant number of 4.59 crore subscribers remained unverified. This is especially significant, viewed in the context of national security concerns as expressed by DoT in June 2003. Non-compliance of 100 *per cent* subscriber verification by the service providers even after a period of seven years of implementation of specific subscriber verification system is significant, defeating the very purpose of achieving essential national security which calls for better monitoring and control by DoT.

The Ministry in its reply (February 2013) stated that when the TERM Cells started carrying out Audit in April 2007, the success rate was only about 74 *per cent* which now has increased to 95 *per cent*. This shows that Audit by TERM Cell has brought about considerable improvement in verification thus adding to national security. 100 *per cent* verification is desirable but in Audit 100 *per cent* verification is theoretical because some CAFs are bound to fail in Audit due to various reasons.

The reply is however unsustainable as no risk is acceptable in the interest of national security. Hence 100 *per cent* subscriber verification by the service providers was not only desirable but also the minimum mandatory requirement. Further the non-compliance of verification has also increased from 4.29 crore subscribers as of April 2007 to 4.59 crore subscribers as of April 2012.

2.1.6.2 Significant shortfall in the achievement of verification audit targets by TERM Cells

DoT in May 2007 introduced monthly verification audit of CAF based on uniform sampling of 0.02 *per cent* of customer base of service providers. In April 2008, it was held that the sample size of 0.02 *per cent* was not sufficient to represent the total population of verified subscribers and hence decided to enhance the sample size to 0.1 *per cent* with effect from 1 May 2008. This meant checking one out of 1000 subscribers

every month by the TERM Cells. The TERM Cells could increase the percentage checks over and above the sample size also.

The year wise mobile connections, the sample size of CAFs to be checked based on sample size of 0.02 (up to April 2008) to 0.1 *per cent* (May 2008 onwards) drawn from mobile working connections every month and actually checked by TERM Cells is given in Table-2 below:

Table-2
Year wise mobile connections, sample size due, checked and shortfall/excess

(Figures in lakh)

Year	Mobile Working connections as of March*	Sample Size due for check	Sample Size actually checked	Shortfall / Excess
2008	2410	23.14	6.35	- 16.79
2009	3800	45.60	40.97	- 4.63
2010	5669	68.03	77.19	9.16
2011	7578	90.93	74.20	-16.73
2012	8403	100.84	88.17	-12.67
Shortfall in sample size actually checked by TERM cell				-41.66

(Source: Data furnished by DoT, * Figures taken from Annual Reports of TRAI)

It can be seen from the table that the TERM Cells did not even complete the audit checks of the sample size during any of the years except for 2010. During the period from 2008-2012, there was a short fall of 41.66 lakh CAFs in respect of seven service providers which indicates that even the bare minimum of 0.1 *per cent* sample audit checks were not conducted by the TERM Cells.

Our examination of the records revealed that the seven major service providers failed to adhere to the DoT's instructions regarding 100 *per cent* verification of identity of subscribers before sale of SIM cards. Telecom Service Provider wise percentage of non-compliant CAFs for the period 2008 to 2012 is given in Table-3 below:

Table-3
Telecom Service Provider-wise percentage of non-compliant CAFs

TSPs	Percentage of non-compliant CAFs				
	2008	2009	2010	2011	2012
AIRCEL	NA ³	4	4	5	5
BAL ⁴	30	8	6	5	5
BSNL ⁵	54	13	6	4	5
ICL ⁶	9	6	5	5	5
RCL ⁷	40	15	9	9	6
TTSL ⁸	28	8	5	5	5
Vodafone	25	7	5	4	4

(Details given in *Annexure-I*) (Source: Data furnished by DoT)

From the above table, it was evident that though there was significant improvement in the compliance over the years, the percentage of non-compliance by the seven major service providers during the period 2008-2012 ranged from 4 to 54 *per cent*. In 2012, RCL still had 6 *per cent* non-compliant CAFs. This indicates that the objective of achieving 100 *per cent* compliances to subscriber's verification by the service providers was yet to be achieved. Based on the percentage of non-compliance by the service providers during 2012, the non-compliant (defective) CAFs in respect of total subscriber base relating to each service provider and penalty for the year 2012 has been worked out as indicated in the Table-4 given below:

Table-4
Statement showing defective CAFs and the penalty worked out

TSPs	Percentage of non-compliant CAFs during 2012	Working connections as of March 2012	Defective CAF	Penalty @ ₹1000 per defective CAF (₹ in crore)
AIRCEL	5	62570000	3128500	312.85
BAL	5	181280000	9064000	906.40
BSNL	5	98510000	4925500	492.55
ICL	5	112720000	5636000	563.60
RCL	6	153050000	9183000	918.30
TTSL	5	81750000	4087500	408.75
Vodafone	4	150470000	6018800	601.88
Total			42043300	4204.33

(Source: Data furnished by DoT)

³ Not available (DoT has not furnished the figures)

⁴ Bharti Airtel Limited

⁵ Bharat Sanchar Nigam Limited,

⁶ Idea Cellular Limited,

⁷ Reliance Communication Limited

⁸ Tata Teleservices Limited

Based on the figures worked out, it could be seen that the total defective CAFs for the seven major service providers was 4.20 crore for the year 2012. Even, if a minimum penalty of ₹1000 is levied for each defective CAF, the total penalty works out to ₹4204 crore for the year 2012 alone.

The mobile subscriber base of the service providers during the years 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 was 26.11 crore, 39.17 crore, 58.43 crore, 81.16 crore and 91.91 crore and the revenue was ₹1,29,083 crore, ₹1,52,348 crore, ₹1,57,985 crore, ₹1,71,719 crore and ₹1,95,442 crore respectively. It was thus evident that though the service providers were capable of handling huge capacity build up and revenue generation in a short span of time, they failed to comply with the instructions of DoT regarding subscriber verification. It also indicated ineffective and poor control of DoT over the telecom service providers to ensure 100 *per cent* subscriber verification essentially for national security even after seven years.

The Ministry in its reply stated (February 2013) that penalties were imposed in case of failures detected during CAF Audit and any extrapolation of penalties was not right. It was further stated that in order to bring more seriousness amongst TSPs, graded system of penalties had been introduced since April 2009. Therefore, conclusion shown in Audit neither reflects the correct picture nor will it help in taking any decision.

The reply was unacceptable as sample size of 0.1 *per cent* drawn for CAF Audit was representative of the population and reflects its characteristics. In fact, the CAF Audit done by TERM Cells was based on sampling of CAFs and the results thereof should be used regarding subscriber verification.

2.1.6.3 Other than regular monthly audit by TERM Cells

DoT instructions (November 2010) provide that the TERM Cells would also conduct audit checks relating to subscriber verification cases other than monthly sample CAF Audit, such as cases referred from Law Enforcement Agencies (LEAs), cases of complaints, cases discovered during investigation of bulk cases, surprise checks etc.

Our examination of the records at DoT Hqrs (August 2012/June 2013) disclosed that based on complaints received and surprise checks, the TERM Cells found that seven major service providers failed to comply with the DoT instructions of 100 *per cent* re-verification of mobile subscribers through CAFs. We noticed a higher percentage of non-compliance of DoT's instructions by the service providers. The details of the complaints checked by TERM Cells, non-compliant CAFs and the percentage of non-compliance of CAFs during the years 2009 to 2012 are given in Table-5 below:

Table-5

Complaints checked, non-compliant CAFs, their percentage penalty imposed and recovered

Service Provider	Complaints checked by TERM Cells	Non-compliant CAFs	Percentage of non-compliant CAFs	Penalty imposed (₹ in crore)	Penalty recovered (₹ in crore)
AIRCEL	4606	1476	32	23.29	1.83
BAL	12697	6984	55	35.32	18.43
BSNL	3058	449	15	17.48	0.28
ICL	3643	1415	39	7.25	2.90
RCL	7610	475	6	8.12	0.75
TTSL	6917	5780	84	37.34	2.91
Vodafone	7439	745	10	6.18	0.18
Total	45970	17324		134.98	27.28

(Source: Data furnished by DoT)

From the Table above, it is evident that the compliance level of most of the service providers was found to be very poor in cases of complaints/surprise checks by TERM Cells. In the case of some of the service providers, such as Tata Teleservices and Bharti Airtel, the non-compliant CAFs were as high as 84 and 55 *per cent* respectively.

The percentage of non-compliant CAFs in the case of regular monthly audits by TERM Cells ranged between 4 and 15 *per cent* (Refer Table-3) during the period 2009 to 2012 whereas in the case of surprise checks carried out by TERM Cells, it ranged between 6 to 84 *per cent* during the same period. This indicated that the findings of TERM Cells regarding non-compliance during regular monthly audits could not be relied upon as surprise checks had revealed non-compliance to a large extent. Hence the system of detecting non-compliance by DoT also could not be fully relied upon. Further, the recovery of penalty imposed was poor as DoT could recover only ₹27.28 crore (20 *per cent*) out of total penalty of ₹134.98 crore imposed on the service providers.

The Ministry in its reply stated (February 2013) that verification of other than monthly CAF Audit was mostly limited to cases received through Law Enforcement Agencies (LEA) and were generally the cases which were found to be non-compliant or suspected by them. Further, these cases also include the cases inspected by the TERM Cells based on the feedbacks received by them and thus comparison of other than monthly CAF Audit with monthly CAF Audit which was solely on random selection was likely to lead to wrong conclusions.

The reply of the Ministry is not convincing as orders relating to other than monthly CAF Audit provides for audit of cases referred from LEAs, cases of complaints, cases discovered during investigation of bulk cases, surprise checks etc and are not limited to LEA referred cases. Further, the CAFs checked under the other than monthly CAF Audit were from the same subscriber base from which the sample CAF's were drawn for monthly CAF Audit and hence results should be comparable. Notwithstanding, the purpose of CAF Audit was solely for achieving 100 *per cent* subscriber verification by the service providers and the high non-compliance of up to 84 *per cent* as shown in Table-5 especially in cases referred by LEAs etc raises serious concerns of national security.

2.1.6.4 Penalty not recovered by the TERM Cells

The Cellular Mobile Telecom Service/Unified Access Service (CMTS/UAS) license conditions inter-alia provide that 'the licensee shall ensure adequate verification of each and every customer before enrolling him as subscriber. Instructions issued by the licensor in this regard from time to time shall scrupulously be followed' and 'the Licensor may also impose a financial penalty not exceeding ₹50 crore for violation of terms and conditions of licence agreement'. From April 2007, DoT introduced penalty of ₹1000 per violation of subscriber number verification. In December 2008, DoT reviewed the situation and observed that the service providers were not complying with the requirement of subscriber verification fully. Hence, DoT introduced graded scales scheme of penalty for subscriber verification failure cases to act as a deterrent. According to the scheme, the correct subscriber verification percentage vis-à-vis financial penalty per unverified subscriber is given in the Table-6 given below:

Table-6
Statement showing graded scale of financial penalty

(Amount in ₹)

Correct subscriber verification percentage in a service area.	Amount of financial penalty per unverified subscriber
Above 95	1000
90- 95	5000
85- 90	10000
80- 85	20000
Below 80	50000

- (i) We observed that although DoT was aware that the service providers did not comply with the subscriber verification fully, it did not invoke imposition of financial penalty of up to ₹50 crore for violation of terms and conditions of licence

agreement in even a single case so as to deter the service providers from non-compliance of their directions.

- (ii) We further noticed that out of ₹2506.80 crore of penalty levied by DoT and the TERM Cells during 2009 to 2012 for defective CAFs, the service providers had paid only ₹389.85 crore as detailed in the Table-7 given below:

Table-7
Penalties imposed, paid and outstanding during 2009-12

(₹ in crore)

SI No	Service Provider	Penalty imposed during 2009 to 2012 by DoT	Penalty paid by Service providers	Difference (Outstanding Penalty)	Percentage realization
1	AIRCEL	474.06	71.75	402.31	15
2	BAL	616.61	113.81	502.80	18
3	BSNL	328.45	59.03	269.42	18
4	ICL	100.83	26.68	74.15	26
5	RCL	628.70	33.94	594.76	5
6	TTSL	88.37	17.90	70.47	20
7	Vodafone	269.78	66.74	203.04	25
	Total	2506.80	389.85	2116.95	

(Source: Data furnished by DoT)

Some of the major service providers such as RCL, BAL, AIRCEL and BSNL had huge outstanding penalty of ₹595 crore, ₹503 crore, ₹402 crore and ₹269 crore respectively. Further, the percentage of realization ranged from 5 per cent to 26 per cent indicating poor realization of penalty by DoT.

- (iii) We found that the DoT merely relied on imposition of penalty on service providers for achieving 100 per cent subscriber verification. Imposition of penalty did not prove to be an effective deterrent for the service providers to comply with 100 per cent subscriber verification. Mere imposition of penalty by DoT without realising the same from the service providers defeated the purpose for which the penalty was levied.

The Ministry in its reply stated (February 2013) that the TSPs had disputed the method of penalty calculation and they were depositing the penalty as per the interim orders dated 18 May 2011 of Telecom Disputes Settlement and Arbitration Tribunal (TDSAT).

TDSAT had given the final verdict (April 2012) in favour of the TSPs which reduces the penalty amount significantly. Instructions had been issued by DoT to re-calculate the penalty amount as per income tax slab with effect from May 2012 in accordance with the TDSAT judgment. However, decision in respect of earlier months was yet to be taken and the gap of penalty imposed and collected would remain unresolved till the final decision was taken on cases belonging to past three years.

The reply is however not tenable on account of the following pronouncement of TDSAT.

1. The matter relating to the security of the nation so far as conduct of telegraph is concerned can be implemented through conditions of license.
2. The service providers cannot be permitted to question the circular letters issued by DoT relating to penalties.
3. DoT cannot be said to have acted illegally and without jurisdiction relating to making inspection and imposition of penalties.

In spite of having a favorable judgment from TDSAT in May 2012, DoT even after a lapse of eight months, failed to issue instructions for recovering the penalties from the service providers for earlier periods up to April 2012. Consequently huge amount of penalty as shown in Table-7 remained unrealized from the service providers.

The Ministry further stated (February 2013) that penalty was initially being collected by the License Fee Cell at DoT Headquarters and shifted to Pay and Accounts Office, DoT from July 2010. Subsequently it was decentralized to Controller of Communication Accounts office of the concerned licensed service areas. Hence consolidated and reconciled information for five years was not available and the complete refinement of data was likely to take a long time especially due to acute shortage of staff in TERM Cells.

The reply of the Ministry itself indicated that DoT did not have proper data relating to penalties levied on the service providers and in the absence of details of penalty levied, its realisation remained doubtful.

Conclusion

With the emergence of mobile telephony in a big way, besides its capability of seamless integration of digital world, the threat of mobile telephony to national security has increased manifold. Even though a number of directions and compliance orders were issued by DoT, we observed that despite seven years of initiating the process, the concern

of national security was not adequately addressed. 100 *per cent* subscriber verification could not be achieved by the service providers due to ineffective monitoring and weak control by DoT and the TERM Cells. Further, as DoT had restricted its audit checks to 0.1 *per cent* of the total subscribers of each service provider, large number of the non-compliant CAFs went undetected and the penalty amounting to ₹2116.95 crore remained unpaid by seven telecom service providers.

Recommendations

- *DoT should devise and implement a comprehensive subscriber verification policy and ensure timely issuance of orders for achieving 100 per cent subscriber verification aiming towards strengthening the national security.*
- *DoT should effectively monitor the implementation of subscriber verification by service providers on half yearly basis, Service Area wise/Service Provider wise and take specific corrective measures.*
- *DoT should monitor levy of penalty by TERM Cells and enforce its recovery from the service providers without delays.*

The Ministry in its reply (February 2013) stated that the action was taken from time to time. Further, comprehensive and stricter norms had been issued by DoT in August 2012 based on the recommendations of Joint Expert Committee formed by Hon'ble Supreme Court. The Ministry further stated that the DoT was monitoring compliance on monthly basis through sample CAF verification process and compliance percentage was increasing with time. Instructions had also been issued to CCAs to en-cash the FBG, if penalty remains unpaid without any court directions to this effect.

The reply of the Ministry was partially acceptable. However, the Ministry despite issue of various instructions from time to time had not been able to ensure achievement of its key objective of national security by getting the 100 *per cent* subscriber verification conducted by the service providers even after a lapse of seven years of initiating of the process. The Ministry needs to implement its own instructions effectively and monitor the same closely so as to ensure that there is no compromise on national security for non-compliance of subscriber verification.

2.2 Shared Mobile Infrastructure Scheme

2.2.1 Introduction

Recognizing the importance of Communications in achieving the country's social and economic goals, Government of India envisaged in its New Telecom Policy of 1999, provision of Universal Service of Telecommunications facilities to all uncovered areas including rural, remote, hilly and tribal areas at affordable prices.

Accordingly a Scheme named 'Shared Mobile Infrastructure Scheme' was launched in 2007 by Department of Telecommunications (DoT) under 'Universal Service Obligation Fund' (USOF). The Scheme was to provide subsidy support for setting up and managing 7353 identified infrastructure sites for provisioning of mobile services in 500 districts spread over 27 states which were otherwise not covered through wireless or mobile services. Villages or clusters of villages with a population of 2000 or more were taken into consideration for the scheme. Each infrastructure site so created was to be shared by three service providers for provision of mobile services.

The scheme had two components:-

Part 'A': Setting up and managing infrastructure sites (land, tower, power, security, civil and electrical works) by Infrastructure Providers (IPs) with subsidy support as a percentage of capital recovery for setting up the infrastructure.

Part 'B': Provisioning of mobile services by Universal Service Providers (USPs) by installation of Base Trans-receiver Stations (BTS) on towers/ infrastructures with subsidy support as a percentage of capital recovery for providing the equipment at the infrastructure sites.

The operation and maintenance expenses of the infrastructure site were to be shared by the Universal Service Providers (USPs) using that site for provisioning of mobile services.

Tenders were invited by DoT in January 2007 for 81 clusters both for setting up, managing infrastructure sites and provision of mobile services in specified rural and remote areas from Basic Service Providers, Cellular Mobile Telephone Service Providers, Unified Access Services Licensees and Infrastructure Providers. The agreements were signed (June 2007) with seven⁹ successful bidders for providing infrastructure sites, who had quoted the lowest subsidy for a cluster. As per the agreement, the infrastructure sites

⁹ Bharti, BSNL, Aircel (Dishnet), Idea, RCL, RTL and Vodafone (Hutch)

were to be made ready by June 2008 but considering the difficulties faced in remote areas mostly in north eastern region, two extensions were granted postponing date of completion to August 2011. Against the target of 7353 towers/infrastructure sites required to be commissioned, 7307 were actually commissioned. The work was almost complete (99.37 per cent) as on 31 August 2012. A subsidy of ₹234.30 crore had also been paid to the infrastructure providers (up to March 2012) as per the scheme.

For implementation of the second part of the scheme, the Department selected 14 USPs to provide mobile services in identified areas. The agreement with the USPs was valid for six and half years from the effective date i.e. 1st June 2007 (one year for last rollout, five years subsidy period and half year for delayed period, if any). Further as per the Operating Conditions of Part-B of the agreement, the USPs were to provide mobile services from each of the sites within two months of commissioning of the infrastructure site by the IPs.

Against the target of 22059 Base Trans-receiver Stations (BTS), the IPs made ready 21921 sites out of which only 15767 BTS (71.93 per cent) were installed till 31 August 2012 as detailed in the Table-1 below:

Table - 1
Status of installation of BTSs

Name of USP (Group company)	No. of sites from which services are to be rolled out by USPs	No. of BTS to be commissioned against tower sites made ready by IPs	No. of sites from which services were rolled out	Sites not rolling out services	Short fall percentage
Bharti*	1174	1173	1126	47	4.00
BSNL	5311	5268	5109	159	3.02
Aircel* (Dishnet)	1586	1544	914	630	40.80
Idea*	2630	2627	2540	87	3.31
RCL	4774	4771	1633	3138	65.77
RTL	3641	3599	1886	1713	47.60
Vodafone* (Hutch)	2943	2939	2559	380	12.93
Total	22059	21921	15767	6154	28.07

(Source: Information as furnished by the Administrator, USOF)

*Group of companies

2.2.2 Audit Findings

Scrutiny of records of the Administrator (USO Fund), DoT Headquarters and Offices of Controller of Communication Accounts relating to Shared Mobile Infrastructure Scheme (July 2011 to August 2012) revealed a number of deficiencies such as defective subsidy support agreement with USPs, non-provisioning of mobile services to uncovered areas, non-recovery of penalty and ineffective penal clause in Service Level Agreement etc as enumerated below:

2.2.2.1 Defective agreement -Non-rollout of services by M/s RCL, M/s RTL, M/s Aircel and M/s Vodafone as USPs

As per the agreement (Clause 6 of Section-VI) forming part of the bid documents, the amount of Liquidated Damages (LD) chargeable for delay in provisioning of mobile services ranged between 5 to 10 *per cent* of annual subsidy. The Performance Bank Guarantee (PBG) (Clause 3 of Section-VII) would be 5 *per cent* of the subsidy payable to the bidder, which could be forfeited by the Administrator in case of failure of performance of terms and conditions by the USP. Thus, both the safeguards were linked to the amount of subsidy claimed by the successful bidder in his bid. While a bidder to be successful should have quoted lowest subsidy, a successful bid with minus or negative subsidy could not attract LD or PBG but could also be a successful bidder. This fact regarding ensuring safeguard of LD or forfeiture of PBG even for those bidders who quoted minus or negative subsidy was neither envisaged at the time of finalizing the scheme nor at the time of calling for bids.

We observed that in the final bid under part-B of the scheme, in 74 out of 81 clusters, the successful bidders quoted negative or zero bids. The agreements thus signed with these bidders did not have any LD or PBG clause to protect the interest of DoT in case of non fulfillment of any conditions by the USPs.

As per the agreement, USPs were to provide the mobile services within two months of the commissioning of the Infrastructure Site by the IP. However, we observed that the performance of the USPs, mainly M/s RCL, RTL, Aircel and Vodafone in respect of commissioning of mobile services was very poor. Against 12853 sites which were made ready by the IPs for provision of services, the USPs could provide services only from 6992 sites (August 2012). The details of sites due and the sites from which the services were not rolled out by these four USPs as well as the percentage of short fall is given in the Table-2 below.

Table - 2
Details of sites due, services rolled out and not rolled out by four USPs

Name of USP	No. of sites from which services are to be rolled out	No. of sites from which services were rolled out	No. of sites where services were not rolled out	Percentage of short fall
Aircel	1544	914	630	40.80
RCL	4771	1633	3138	65.77
RTL	3599	1886	1713	47.60
Vodafone	2939	2559	380	12.93
Total	12853	6992	5861	45.60

(Source: Information furnished by the Administrator, USOF)

Further, due to non-inclusion of adequate safeguards and penal clauses in the agreements with USPs in case of non/delayed roll out of services, no action could be taken against the defaulting USPs.

In view of zero/negative bidding by the USPs, the department should have made suitable amendments/modifications in the agreements regarding penalty for non roll out of services before evaluating the bids by the Department in consultation with the bidders.

The Ministry stated (December 2012) that 15895 BTS i.e. 72.48 *per cent* of BTS have been installed till 31 October 2012 for provisioning of mobile services from 7310 tower sites. 7310 of 7353 towers have BTS installed and radiating; thereby benefitting approximately 99 *per cent* of the villages/sites. Under this circumstance the objective of the scheme is achieved to a very high extent. Therefore, one of the objectives of the scheme i.e. setting up of infrastructure in rural & remote areas for provisioning of mobile services has been achieved.

The presence of even one BTS radiating from each tower entails achievement of the objective and hence, the second objective of the scheme i.e. provisioning of mobile services have also been achieved.

The reply of Ministry that both the objectives of the scheme had been achieved was not acceptable in view of the fact that the second objective of provisioning of mobile services to the uncovered areas was not fully achieved. The mobile services from 6026 sites¹⁰ were not rolled out to the proposed areas till 31 October 2012 by the USPs thereby depriving customers of availing the choice of competitive services despite the creation of infrastructure sites for which subsidy was paid to the Infrastructure Providers. Further, DoT was unable to enforce the roll out obligations on USPs due to non-inclusion of any

¹⁰ total BTS to be commissioned 21921 less number of BTS commissioned 15895

LD or PBG clause in the agreements in case of zero/negative bidding by the USPs. Due to non-rolling out of services by the USPs, the burden of sharing operating and maintenance charges of these 6026 sites by other existing USPs would also increase.

Thus due to inadequate safeguards in the agreement, the Administrator, USOF/DoT was unable to take any action on the non-performing/defaulting USPs.

2.2.2.2 Non-provision of mobile services in 290 sites by USPs despite subsidy paid to the IPs for creation of infrastructure sites

We observed that in six Telecom Circles (Maharashtra, Odisha, Madhya Pradesh, Chhattisgarh, North East-II & Bihar) 3488 numbers of infrastructure sites were commissioned by the IPs under the Scheme. However, no mobile services were provided by a single USP in 290 sites even after 18 to 36 months of their commissioning as of March 2012. The Department had paid ₹5.67 crore to the IPs towards subsidy (till March 2012) in respect of 290 sites as detailed in the Table-3 given below:

Table - 3
Details of subsidy paid to Infrastructure Providers (IPs) for the sites from which mobile service was not provided

Sl. No.	Name of Telecom Circle	No. of Sites Commissioned by March 2012	No. of sites from where mobile service not provided by any USPs (March 2012)	Amount of subsidy paid to IPs for these site(i.e. Non radiated sites) up to March 2012 (₹ in lakh)
1	Maharashtra	956	31	29.10
2	Odisha	429	142	243.02
3	MP	933	14	23.57
4	Chhattisgarh	552	11	57.68
5	North East II	165	61	168.64
6	Bihar	453	31	45.15
	Total	3488	290	567.16

(Source: Data collected from CCA Offices of DoT)

Further, in four Telecom Circles (viz. Maharashtra, Uttar Pradesh (East), UP (West) & Uttarakhand), out of 1582 commissioned sites, 474 sites were radiated by USPs with delays up to 949 days. The subsidy of ₹4.09 crore paid to the IPs for managing these 474 sites during non radiation period was thus rendered unfruitful as detailed in the Table-4 below:

Table - 4
Delays in rolling out services by USPs and subsidy paid to IPs during non-radiation period

(₹ in crore)

Sl. No	Name of the Circle	No. of sites commissioned	No. of sites in which service was delayed	Period of delay (no. of days)	Amount paid as subsidy to IPs during non-radiation period
1	Maharashtra	956	85	20 to 949	1.43
2	UP (East)	369	234	06 to 624	1.60
3	UP (West)	73	23	04 to 60	0.03
4	Uttarakhand	184	132	01 to 773	1.03
	Total	1582	474		4.09

(Source: Information furnished by the CCA offices)

On this being pointed out by us, the Ministry replied (December 2012) that there were separate agreements with the IPs and USPs and the subsidy was being disbursed as per the terms and conditions of the respective agreement. In fact, the subsidy paid to IPs was in lieu of the cost of infrastructure incurred by them and was not remuneration for radiation of mobile services. Nothing undue had been paid to the IPs. The infrastructure so created would be utilized in future also for services in rural and remote areas even after the expiry of the USOF agreement and the USPs would continue services even after the expiry of the subsidy period and hence subsidy paid to IPs could not be rendered unfruitful.

The reply of the Ministry was unacceptable since audit objection was not on the justification for payment of subsidy to IPs as a whole but specifically only on the subsidy paid to the IPs for managing 290 sites where services had not started and 474 sites where services were provided with abnormal delays during non-radiation period. Since these sites did not radiate for considerable time periods, the subsidy paid to them was not justified. Further, the DoT had not been able to take action on USPs who had not radiated/delayed the services from the sites which were made ready by the IPs. As a result, the villages proposed under the Scheme from these sites were left uncovered with mobile services.

2.2.2.3 Non-recovery of Penalty for interruptions/downtime in services

Clause 2.3 of the Financial Conditions of the Part-B agreement stipulates that a penalty shall be payable by the USP on pro-rata basis on account of prolonged interruptions of service due to any reason. The USPs shall furnish the details of interruption/downtime of

the service along with the payment statement as per prescribed 'proforma'. Further, clause 2.4 stipulates that no penalty shall be payable in case of interruption of mobile services for a period up to 7 days in a quarter. Penalty @ ₹500 per day shall be payable if there is interruption in service for more than 7 days in a quarter. However, if there is interruption in services for 45 days or more in a quarter, penalty shall be payable for the whole quarter.

It was noticed in Odisha and Karnataka Telecom Circles that USPs did not furnish the requisite information related to interruptions/downtime to CCA office regularly in the prescribed format. On being pointed out by us, demands were raised by Odisha Circle against the USPs i.e. M/s Bharti Airtel Ltd (BAL) and M/s Dishnet Wireless Ltd. (DWL) for ₹12.02 lakh. M/s BAL and M/s DWL (Aircel) stated that interruptions in services were on account of infrastructure related failures which were to be attended by IPs and penalty could not be levied on them. Karnataka Circle raised a demand for ₹53.84 lakh on M/s. Bharti Airtel after being pointed out by audit and recovery was awaited. In Madhya Pradesh Telecom Circle, CCA Office levied a penalty of ₹2.48 crore for interruption/downtime of services on M/s. IDEA for the period from April 2008 to March 2011 but no payment was made to DoT so far. CCA Office Bhopal replied (July 2012) that the matter had been referred to DoT.

The penalty of ₹3.14 crore levied on four USPs for down time/ interruptions in service as indicated in the Table-5 given below had not been realized by DoT.

Table - 5
**Details of Penalty of ₹3.14 crore levied on four USPs, for down time/
interruptions in service not realized by DoT**

Sl. No.	Name of Telecom Circle	Name of USPs	Amount of penalty to be recovered (₹ in lakh)	Period
1	Madhya Pradesh	IDEA	248.25	2008-09 to 2010-11
2	Odisha	Bharti Airtel	9.62	April 2010-March 2011
		DWL (Aircel)	2.40	April 2010-March 2011
3	Karnataka	Bharti Airtel	53.84	Oct.2008-Dec.2011
		Total	314.11	

(Source: Data collected from the CCA offices.)

The Ministry in their reply stated (December 2012) that as per the information received from the respective CCA Offices, there had been delay on part of the USPs in submission of details of interruption/downtime in service in some of the Circles which delayed the process of calculation/levy of penalty by CCAs and the above Circles were pursuing the matter with the USPs concerned for deposit of penalty as pointed out by Audit.

The reply of the Ministry itself reflected that the Internal Control Systems of the field offices for levying and recovery of penalties for down time/interruptions were weak and required to be strengthened. Realization particulars of the penalty pointed out by audit were awaited (December 2012).

2.2.2.4 Weak and ineffective penal clauses in the Service Level Agreements leading to non-payment of Operating Expenses by USPs and increasing the burden on Infrastructure Providers (IPs)

BSNL successfully bid for 63 clusters out of 81 clusters as IP for setting up and managing infrastructure sites and entered into agreement with DoT (May 2007) for a period of six and half years. As per the sub clause (vii) & (viii) of Clause 1 of Commercial Conditions of the agreement under Part-A of the Scheme, these infrastructure sites were to be shared for a period of five years by three USPs on payment of operational expenses to the IP (BSNL) for providing mobile services.

For this purpose, the IPs had to enter into Service Level Agreements (SLAs) with the USPs. The USPs were required to pay the fixed maintenance charges and recurring operating expenses to the IP on shareable basis. The USPs were also required to pay rolling advance towards reconciliation of the expenses on periodical basis as per the procedure laid down in SLA. The SLA stipulated payment of rolling advance and fixed maintenance charges within 15 days of receipt of invoices. USPs were liable to pay interest @ 2 per cent per month for the period of default on any fee or other amount payable to the IPs.

Our scrutiny (May 2012) of records available with the Principal General Manager (Electrical) BSNL, Corporate Office and information furnished by them in October 2012, revealed that the outstanding from five USPs increased to ₹123.00 crore by the end of August 2012 from ₹109.38 crore as at the end of March 2012 as given in the Table-6 below:

Table - 6
Statement showing Outstanding Dues (Operating & Maintenance Charges for USO Infrastructure sites) to BSNL

(₹ in crore)

Universal Service Provider Group	Outstanding Amount as on August 2012
Reliance	78.10
Vodafone	16.17
Idea	10.80
Airtel	2.24
Aircel	15.69
Total	123.00

(Source: Information furnished by BSNL Corporate Office)

Out of the total amount of ₹123 crore outstanding from the Universal Service Providers, the outstanding from M/s Reliance constituted 63.50 per cent (₹78.10 crore) of the total dues payable to BSNL as IP. In respect of M/s Airtel, the outstanding dues have come down from ₹3.14 crore (March 2012) to ₹2.24 crore (August 2012) and in respect of M/s Aircel, the dues increased from ₹10.01 crore (March 2012) to ₹15.69 crore (August 2012). In respect of M/s Idea Cellular, the dues increased from ₹9.79 crore to ₹10.80 crore during April to August 2012.

We observed that there was no clause in the SLA to take action either by BSNL or by DoT to rescind the agreement for non-payment of operating expenses and hence this had resulted in unwarranted burden on BSNL as IP.

The Ministry replied in December 2012 that the IPs and USPs should resolve their issues mutually in accordance with the SLA(s) signed by them. USOF HQ had requested the IPs/USPs, time and again, to resolve their issues mutually in accordance with the SLA(s) signed by them to ensure smooth and uninterrupted mobile services from USOF towers and this is more by way of an administrative persuasion which is beyond the scope of legal contract between the parties themselves.

The reply of the Ministry itself strengthens the audit observations that it had no control over the defaulting USPs which led to accumulation of dues from USPs to the extent of ₹123 crore (August 2012) payable to BSNL. Further, the defective subsidy support agreements provided undue benefit to defaulting USPs who did not provide the mobile services as agreed to or provided services but with significant interruptions and downtime.

Conclusion

Shared Mobile Infrastructure Scheme of DoT under Universal Service Obligation Fund had been successful in terms of setting up and managing infrastructure sites by the Infrastructure Providers (IPs) as more than 99 *per cent* of target was achieved. However, the main objective of providing wireless or mobile services to uncovered areas including rural, remote, hilly and tribal areas under the scheme was deficient and achieved to the extent of 72 *per cent* as services from 6026 sites created by IPs were not rolled out by the USPs till October, 2012. Further, ₹9.76 crore was paid by DoT as subsidy to the IPs (for managing 290 sites where services were not started by any USP and 474 sites where services were provided with abnormal delays) during non-radiation period.

Further, in the absence of adequate safeguards and penal clauses in the agreement, no action could be taken on the non-performing/defaulting USPs for non/delay in roll out of services. Office of the Administrator, USOF (DoT Hqrs) also did not ensure inclusion of an effective clause in the SLA for taking penal action by DoT in the case of any dispute between the IPs and USPs or against defaulting USPs for non-payment of operating expenses to the IPs.

2.3 Violation of terms and conditions of USOF/UAS Licence Agreement by Reliance Group Companies

Unilateral switch off of mobile services by M/s RCL and M/s RTL in violation of terms and conditions of USOF/UASL Agreement resulted in depriving affordable mobile services to the specified rural and remote areas of the Country allotted to them

A Scheme named ‘Shared Mobile Infrastructure Scheme’ was launched in January 2007 by Department of Telecommunications (DoT) under Universal Service Obligation Fund (USOF) to provide financial support to Universal Service Providers (USPs) for setting up and managing 7353 identified infrastructure sites located in 500 districts, spread over 27 States. These sites were not covered through wireless or mobile services. Villages or clusters of villages with a population of 2000 or more were taken into consideration. Each infrastructure site so created by Infrastructure Providers (IPs) was to be shared by three USPs for provision of mobile services.

The Scheme was to be implemented in two concomitant parts viz.; Part-A for setting up of infrastructure sites in order to cater to the requirement of USPs by sharing this infrastructure for providing mobile services and Part-B for provisioning of mobile

services by USPs (UAS/CMTS Licensees) by installation of Base Trans-receiver Stations (BTSs) with associated antennas and backhaul¹¹.

In January 2007, DoT invited tenders for 81 identified clusters¹² both for setting up & managing infrastructure sites (under Part-A) and provision of mobile services in specified rural and remote areas (under Part-B) from Basic Service Providers, CMTS Providers, UAS Licensees and Infrastructure Providers(IPs).

For implementation of Part-B of the Scheme, the Department selected 14 USPs through bidding process which had UAS/CMTS licenses in the concerned service areas for provisioning of mobile services in identified rural and remote areas and subsequently entered into an agreement with 14 USPs under the USOF. The Agreement with USPs was valid for six and half years from the effective date i.e. 01 June 2007. On completion of period of agreement, USPs were required to provide mobile services as per provision of UASL Agreement.

M/s Reliance Communications Ltd (M/s RCL) and M/s Reliance Telecom Ltd (M/s RTL) were amongst the selected 14 USPs for provision of mobile services in specified rural and remote areas in the Service Areas (SAs) in which they had UAS licenses. Agreements were signed by M/s RCL and M/s RTL in May 2007 with the Administrator, USOF¹³ for provision of mobile services in 53 clusters¹⁴ (5118 sites) and 40 clusters¹⁵ (3864 sites) respectively out of the 81 identified clusters under Part-B of the Scheme.

Scrutiny of records (June-July 2012) revealed that M/s RCL and M/s RTL had unilaterally switched off 1191 and 228 BTSs out of 1607 and 1598 commissioned BTSs respectively w.e.f 22 November 2010. The reasons attributed by the two companies for switching off was stated to be due to non-fulfilment of roll out commitments by IPs in time and huge delays on the part of IPs which disturbed the project dynamics leading to blocking of huge sums of capital. It was further stated that providing mobile services in many low potential clusters which had a strong presence of other operators was extremely unviable. Most of the sites also did not have State Electricity Board (SEB) power connectivity leading to high operating costs.

¹¹ Backhaul is the connection from the base station to the core network by taking the traffic from the base station and backhauling it to the network

¹² These clusters were located in different Service Areas (SAs) for which UAS licenses have been awarded by the DoT to several licensees in each SA.

¹³ Government established the USOF by an Act of Parliament and is headed by the Administrator, appointed by the Central Government. He is empowered to formulate procedures for implementation of USO Fund Schemes and disbursement of funds from USOF.

¹⁴ These clusters are located in 17 States.

¹⁵ These clusters are located in 10 States

The reasons cited by M/s RCL and M/s RTL for switching off the BTSs were however, not agreed to by the Ministry. Accordingly, a Show Cause Notice (SCN) each to M/s RCL and M/s RTL was served by Administrator, USOF on 21 December 2010 and 06 January 2011 respectively to explain within 15 working days asking them as to why action should not be taken to impose a financial penalty not exceeding ₹50 crore under clause 10.2 (ii) of UASL Agreement for violation of terms and conditions of licence agreement and also to blacklist them from participation in all future schemes supported by USOF.

As no response was received from M/s RCL and M/s RTL within the prescribed time limit, a proposal for levy of penalty under clause 10.2 (ii) of UASL Agreement was mooted (31 January 2011) by the Ministry. While the proposal was under consideration, the reply (dated 16 February 2011) to the SCN was received by the Ministry. However, even before the same was examined, the Ministry imposed a penalty on M/s RCL and M/s RTL on 18 February 2011 under clause 2.3 and 2.4 of Section VII "FINANCIAL CONDITIONS" of USOF Agreement (Part B-II). The reasons given by the Ministry for imposition of the penalty under the above clause was stated to be on account of clearly "inbuilt" penal provisions which exist in RCL-USOF Agreement which provide for deduction in subsidy on pro-rata basis as well as penalty @ ₹500/- per day respectively in case of prolonged interruption.

Audit observed that the action of M/s RCL and M/s RTL to switch off unilaterally from the radiating BTS was irregular and violated the terms and conditions of not only the USOF Agreement but also the UASL Agreements due to the following reasons:

- I. While Clause 1 Section III "GENERAL CONDITIONS" of USOF Agreement states that it is subject to terms and conditions of BSO/CMTS/UASL license, Clause 1.1 Section VI "OPERATING CONDITIONS" of the USOF Agreement (Part B-II) states that the terms and conditions of the BSO/CMTS/UASL License Agreement, as applicable, shall prevail and shall be binding mutatis mutandis. Thus USP has to comply with the terms and conditions of BSO/CMTS/UASL license as applicable.
- II. As per clause 30.3 of Part V "OPERATING CONDITIONS" of UASL License Agreement, the licensee shall have to ensure continuity of services to the customers unless license is terminated or suspended by the licensor for any reason what so ever. Clause 10.3 of Part-I "GENERAL CONDITIONS" of UASL Agreement further provides that even if the Licensees wish to surrender their license, they have to give 60 days' notice to the Licensor and notify all its customers by sending a 30 calendar days notice to each of them.

- III. Clause 6.1 of Section-III "GENERAL CONDITIONS" of the USOF Agreement states that on expiry of the USOF Agreement period, the responsibility of operation & maintenance of the equipment installed and provision of mobile services shall lie on the owner operator i.e. USP.

Thus, any rollout by the Telecom Service Provider, irrespective of whether the rollout was financially supported by USOF or not, was essentially a part of BSO/CMTS/UASL rollout and had to be maintained by the Service Provider.

In response to the Audit observations (August 2012), the Ministry stated (October 2012) that:

- I. The decision on imposition of penalty was limited to the USOF Agreement, while deciding SCN dated 21 December 2010 issued by USOF (and not Licensor-DoT). Separate SCN (if necessary) could only be initiated by the Licensor in order to invoke penal provisions of UAS/CMTS Licenses.
- II. The agreement between USOF and M/s RCL and M/s RTL was a contractual agreement for limited purpose of USOF mobile towers.
- III. While passing the order dated 18 February 2011, the Competent Authority had clearly exercised his discretion judicially and after taking into account all relevant factors.

The reply given by the Ministry is not acceptable due to the following reasons:

- As per the clause 1.1 Section VI "OPERATING CONDITIONS" of the USOF Agreement (Part B-II), the terms and conditions of BSO/CMTS/UASL Agreement, as applicable, shall prevail and shall be binding mutatis mutandis.
- The USOF Agreement does not provide for switching off of mobile services. The USOF Agreement only provides for action to be taken on account of prolonged interruptions due to any reasons (non-availability of electrical power, backhaul etc) as given in Annexure-10 of para 2.3 of Section VII "FINANCIAL CONDITIONS" of USOF Agreement (Part B-II). While USPs shall continue to provide the services under Clause 12.3 Section III "GENERAL CONDITIONS" of USOF Agreement for the whole duration of the Agreement, M/s RCL and M/s RTL had switched off the commissioned BTSs voluntarily, deliberately and unilaterally without ensuring continuity of service to customers and without giving any notice to the licensor/subscribers which was in contravention and violation of the terms and conditions of USOF Agreement as well as UASL Agreement.

- Regarding the issue of a separate SCN by the Licensor, Audit observed that the learned Attorney General opined (20 May 2012) on issue of separate SCN that whilst the issuance of afresh SCN would be legally permissible, there may be serious questions as to whether action of issuing a SCN afresh at this stage would be sustainable in the law. Thus while the opinion of the Attorney General clearly indicated the non-sustainability of issuance of afresh SCN, the opinion also implies that the levying of penalty under USOF Agreement had weakened the position of the department regarding issuance of afresh SCN under UASL Agreement.
- The argument put forth by the Ministry for imposing penalty under USOF Agreement on the basis that the agreement between USOF and M/s RCL and M/s RTL was a contractual agreement for limited purpose of USOF mobile towers is incorrect. For the purpose of provision of mobile towers other agreements were entered into by the Administrator, USOF with various infrastructure providers which relate to setting up of infrastructure sites in order to cater to the requirement of service providers by sharing this infrastructure for providing mobile services for which agreements were entered into between USPs and IPs. The present case is regarding violation of operating terms and conditions of USOF and UASL Agreements by deliberate and unilateral switch off of radiating BTS by M/s RCL and M/s RTL resulting in the shutting off of mobile services in specified rural and remote areas of the country which had been allotted to them as per their bid under the Shared Mobile Infrastructure Scheme.
- Further as informed by the Ministry, a committee was constituted under the Chairmanship of Secretary (T) on 15 July 2011 to consider all aspects of delay in rollout of mobile services under the Shared Mobile Infrastructure Scheme of USOF. Scrutiny of records available to audit showed that even though there was no material change in the position of the case from the date (February 2011) when the order was issued regarding levy of penalty under para 2.3 and 2.4 Section VII of USOF Agreement and constitution of the committee on 15 July 2011, the Hon'ble Minister of MoC&IT directed on 16 July 2011 as given under:

“Now that the penalty under Clauses 2.3/2.4 of Section VII of the Agreement between USOF and M/s RCL has already been imposed on account of “interruption” of services, we need to ascertain the reasons why the Licensee decided unilaterally to discontinue the services sometime in November, 2010. Appropriate steps should be taken to ascertain from the Licensee the reasons and circumstances, under which such unilateral decision was taken by him, leading to avoidable inconvenience to subscribers. Upon receipt of the Licensee’s response, along with other data necessary to take an informed decision, action, if necessary, be initiated under UASL by the

appropriate authority in the Department of Telecommunications (i.e. Licensor)". Ministry thereafter referred the matter to the above committee.

As informed by the Ministry in its reply, the Committee in its report had also considered the issue of switch off of mobile services by M/s RCL and M/s RTL and has recommended in its report that "the mobile services provided by USPs under USOF scheme are to be continued even after expiry of the subsidy period in accordance with Commercial Conditions of the USOF Agreement." The Committee also stated that "it is evident from terms of USOF Agreement that mobile services are to be maintained by the USPs under its relevant Telecom Service License (UAS/CMTS License)."

Therefore, it is apparent that the decision to treat switching off of mobile services by M/s RCL and M/s RTL as mere interruption in services does not appear to have been taken after consideration of all relevant factors.

Further, clause 1.1 Section VI "Operating Conditions" of USOF Agreement (Part-B-II) provides that the provisions of the Operating Conditions of UASL Agreement shall prevail and shall be binding mutatis mutandis on the Agreement under USOF with M/s RCL and M/s RTL. Therefore, treating the act of M/s RCL and M/s RTL of unilaterally switching off the radiating BTSs in an arbitrary¹⁶ manner as mere interruption of services under clauses 2.3 and 2.4 of USOF Agreement¹⁷ by the Ministry instead of as violation of terms and conditions of the UASL Agreement under clause 10.2 (ii)¹⁸ was unjustified.

¹⁶ Without ensuring continuity of services and without giving any notice to the Licensor/Subscribers as stipulated in the UASL Agreement.

¹⁷ Clause 2.3 of USOF agreement states that a penalty shall be payable by the USP on pro-rata basis on account of prolonged interruption of service due to any reason which are mentioned in Annexure-10 of clause 2.3. Clause 2.4 of USOF Agreement states that penalty @ ₹500 per day shall be payable if there is interruption in services for more than 7 days in a quarter.

¹⁸ Clause 10.2(ii) of UASL Agreement states that "The licensor may also impose a financial penalty not exceeding ₹50 crore for violation of terms and conditions of licence agreement. This penalty is exclusive of Liquidated Damages as prescribed in the Licence Agreement."