CHAPTER – III
Revenue shared by M/s Bharti Airtel Limited and M/s Bharti Hexacom Limited

3.1 Brief Profile of M/s Bharti Airtel Limited and M/s Bharti Hexacom Limited

Bharti Airtel Limited (BAL), formerly known as Bharti Televenture Limited (BTVL), was one of the first private telecom companies who was awarded licences for providing cellular services in November 1994 (licence was issued to the then entity named as "Bharti Cellular Limited). BAL had only two CMTS licences till January 2000. By the year 2004 the company was having a pan India presence with licences in all 23 LSAs. BAL was the first Indian Telecom service provider (TSP) to obtain the Pan India CMTS/UAS licence. The turnover of the company also grew continuously. BAL maintained its leadership position in Indian private telecom sector.

3.1.1 Licences granted to M/s Bharti Airtel Limited and M/s Bharti Hexacom Limited

BAL was awarded licences for providing cellular services in metro Licenced Service Area (LSA) of Delhi in November 1994[1] and later on for Himachal Pradesh LSA in December 1995.

BAL further acquired CMTS licences as detailed below:

Table 3.1

Period	Details of licences acquired
1999-2002	CMTS licences in five service areas by acquiring three companies[2]
2001	CMTS licences in eight[3] service areas
2004	UASL licences in six[4] service areas

M/s Bharti Hexcom Limited (BHL), a subsidiary of BAL, acquired CMTS licences in North East and Rajasthan service areas in 2004. Hence, by the year 2004, BAL/BHL was having a pan India presence with licences in all 23 LSAs.

1 Licence was issued to the then entity named as "Bharti Cellular Limited"
2 JT Mobile (Punjab, AP, Karnataka) , Skycell (Chennai) and Spice Cell (Kolkata)
3 UP(W), ,Maharashtra, Haryana, Gujarat, Kerala, Mumbai, MP and Tamil Nadu
4 Orissa, J & K, Bihar, UP(E), West Bengal and Assam

The details of other licences held by BAL and its subsidiaries are as on 1 April 2006 as given in Table below:

Table 3.2

Sl No	Services	Remark
1	NLD	Original licence issued to Bharti Telesonic Limited (BTSOL) which merged with BAL.
2	ILD	Original licence issued to Bharti Telesonic Limited (BTSOL) which merged with BAL.
3	ISP-IT	Original licence issued to Bharti BT Internet Limited which merged with BAL.
4	VSAT	Original licence issued to M/s Wipro Infotech Limited which merged with BAL.
5	ISP	Original licence issued to Comsat Max which was taken over by Bharti Broadband Limited (BBL). BBL was merged with BAL.
		Original licence issued to M/s Bharti Acquanet Limited (BAqL)which merged with BAL.
6	VSAT	Original licence issued to Comsat Max which was taken over by Bharti Broadband Limited (BBL). BBL merged with BAL.
7	IP I	Originally registered with Bharti Telesonic Limited (BTSOL) which merged with BAL.
		Originally registered with Bharti Telenet Limited which merged with BAL.
		Registered with M/s Bharti Infratel Limited, a subsidiary of BAL.

3.1.2 Spectrum allotted to BAL/BHL

BAL/BHL are Global System for Mobile communication (GSM) operators. Initial start-up spectrum for subscriber access (Main Radio Spectrum) to a GSM operator was 2x4.4 MHz. LSA wise spectrum allotted to BAL/BHL as on 31 March 2010 were as follows-

Table 3.3

LSA wise spectrum allotted

Sl.No.	Spectrum	Licenced Service Area
1	2×10 MHz	Andhra Pradesh, Delhi, Karnataka
2	2×9.2 MHz	Bihar, Mumbai, Tamil Nadu (including Chennai)
3	2×8.2 MHz	Maharashtra, Rajasthan
4	2×8.0 MHz	Kolkata, Orissa
5	2×7.8 MHz	Punjab
6	2×7.2 MHz	UP East
7	2×6.2 MHz	Assam, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, North East, UP West, West Bengal

3.1.3 Subscriber base of BAL/BHL

The cellular subscribers of BAL and BHL grew from 3.71 crore as on 31 March 2007 to 12.76 crore as on 31 March 2010 registering a growth of 244 *per cent*. Wireline subscribers increased from 0.19 crore as on 31March 2007 to 0.31 crore as on 31 March 2010. Bharti group remained on top of all the cellular operators during the years 2006-07 to 2009-10 and its market share was around 21 *per cent* as on 31 March 2010.

3.1.4 Gross Revenue, Deduction, Adjusted Gross Revenue reported and revenue share paid by BAL/BHL

As brought out in Para 1.5, Telecom Service Providers are required to pay LF and SUC at a percentage of AGR on quarterly basis on self-assessment basis. GR, Deductions, AGR reported and revenue shared (LF and SUC) by BAL/BHL during these years are as follows:

Table 3.4

(₹ in crore)

Year	GR	Deductions	AGR	Percentage of AGR to GR	Revenue share (LF+SUC)
2006-07	20133	5452	14681	72.92	1687
2007-08	29222	7139	22084	75.57	2516
2008-09	40997	11082	29915	72.97	3689
2009-10	43649	11357	32292	73.98	3889
Total	**134001**	**35030**	**98972**	**73.86**	**11781**

3.2 Under reporting of revenue by BAL/BHL

As mentioned in para 1.4 (a),the GR shall be inclusive of all types of revenue stated therein without any set-off for related item of expense, etc. and as brought out in Para 1.5, service revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately.

Audit examination of records/Books of accounts (Vouchers, General Ledger, Trial Balance, Profit and Loss Accounts, Balance Sheet, etc.) of BAL/BHL revealed that these companies had not adhered to the provisions of the Licence Agreement as brought out in the succeeding paras:

3.2.1 Under reporting of revenue due to netting off of revenue pertaining to Commission/offers/discounts to dealers/subscribers for prepaid services

From the examination of data/records pertaining to prepaid services furnished by BAL/BHL for the period from 2006-07 to 2009-10, it was observed that –

- The margin/commission given to distributors/agents was netted off from revenue pertaining to prepaid services.
- Offers to the subscribers viz. Free Air Time (FAT) to customers, Free of Cost (FOC) Coupons/Cards/SIMs to customers, Promotional offers to customers, Full talk time offered to customers, Adjustments offered to customers, etc, were set-off from the revenue pertaining to prepaid services.

The item wise details are furnished below-

A) Margin/Commission:

The licensee company appoints distributors/franchises/dealers for selling telecom services on commission basis. The company supplies to the distributors/franchises/agents the prepaid recharge coupons/e-top up for sale to subscribers and pays commission/margin to them. During review of data/records offered by BAL/BHL for the period from 2006-07 to 2009-10, it was observed that the Primary commission/margin paid to the distributors/franchises/dealers at the time of sale of prepaid recharge coupons/e-top up were deducted from the revenue. This resulted in revenue getting set-off of commission/margin in the books and as a result, Net Revenue was considered in AGR statements submitted to DoT. It was also noticed that Post sale Commission/Incentive paid to the distributors/franchises/dealers were booked in expenditure head under description "Sales Commission and Incentives". Total amount deducted from revenue on account of commission/margin to the distributors/franchises/agents/dealers during 2006-07 to 2009-10 was ₹ 1070.78 crore.

Since, the commission/margin paid to the distributors/franchises/dealers is in the nature of business expenses (marketing expenses), therefore, set-off of such expenses with revenue was against the licence condition.

On being pointed out by audit, it was stated by Management that-

- The relationship between the company and distributors was on a Principal to Principal basis and accordingly the company was required to account for the transactions with such distributors as such on the amount realized from the distributors.
- Further, TDSAT in its judgment dated 23 April 2015 held that "In our view the definition of "gross revenue" cannot be construed as to bar the licensee from fixing a wholesale price for the service which is lower than its MRP. The test is how the

actual transaction takes place. If the sale and invoicing is on MRP and any discount is given separately, then in terms of clause 19.1, such discount is not deductible even if the revenue booked in the Profit and Loss account is after netting off the discount. On the other hand, if the sale is on a stated/agreed price, invoiced at that agreed price and booked under the revenue in the Profit and Loss account accordingly without netting off any discount, the actual selling price would be the revenue and the difference between the MRP and this selling price cannot be added to "gross revenue".

- Out of Commission/Margin as pointed out by audit, ₹ 8.78 crore was knocked with the corresponding credit/contra entry.

Audit's view on the management reply is as follows-

Total amount deducted from revenue on account of commission/margin has been revised to ₹ 1062.00 crore **(Annexure - 3.01)** on the basis of the Management's reply. Resultantly, LF and SUC amounting to ₹ 89.79 crore and ₹ 45.40 crore respectively were not paid on the said revenue by the Company **(Annexure - 3.01)**.

Regarding other issues, reply of the management is not tenable as -

- BAL is rendering the services ultimately and had BAL sold the cards directly to the customers, revenue would have been accounted for full value of service rendered and selling expenses would have been accounted as expenditure. On the same analogy, discount/commission accorded to distributors would be in the nature of Marketing Expenditure and thus, should not be deducted from Revenue. This is in accordance with stipulation in clause 19.1. Further, Audit opines that this transaction is not covered under Principal to Principal since the ultimate responsibility of rendering the service to the customer rests with BAL/BHL and not with the distributors.

- While the matter is sub-judice at Hon'ble Supreme Court, Audit view is that commission/margin paid to the distributors/franchises/dealers is in the nature of marketing expenses, therefore, set-off of such expenses with revenue was against the licence condition.

B) Offers/Discount/Rebates to customers/dealers: -

- **Free Airtime (FAT):** Subscriber account is credited on major festivals/occasions with extra talk time by the Company without any charge. The extra talk time so credited was referred to as Free Air Time (FAT).

- **Free of Cost (FOC) Coupons/Cards/SIMs to customers/dealers:** Similarly, free of cost coupons/cards/SIMs were given to customers/dealers on major festivals/occasions.

- **Promotional offers to customers:** Subscriber account was credited with additional/ extra talk time by the Company without any charge as promotional offers.
- **Full talk time (FTT) offered to customers:** Subscriber account was credited with full talk time by the Company as part of promotions.
- **Adjustments offered to customers (Negative processing fee/Initial talk-time/ Upsize or upfront hit on talk-time/various adjustments):** Subscriber account was credited with talk time by the Company more than the face value of the RCs/ e-recharge or sometimes adjustments were made to facilitate the subscribers/dealers to gain talk-time as part of promotions.

During review of data/records furnished by BAL/BHL for the period from 2006-07 to 2009-10, it was observed that the cost of above offers provided to the subscribers was deducted from prepaid services revenue upfront and as and when the same was used by subscriber, the revenue was credited by the said amount. Resultantly, the Revenue on account of these offers to subscribers were not recognised in the GR/AGR. It was also observed that FOC/Promotional offer/Upsize etc. were also booked in the expenditure heads.

Since offers to customers (FAT/FTT/FOC/Extra talk time, etc.) were part of overall commercial strategy to enhance business, the cost of such offers/discounts/rebate were in the nature of expenses. Further, as per licence agreement, service revenue should be shown in gross without any set-off**.** Thus, the action of the Management in setting off the cost of offers/discounts/rebate from revenue was against the licence agreement and resulted in short payment of LF and SUC as detailed below:

Table 3.5

(₹ in crore)

Offers/Discount/Rebates to customers	Under reporting of GR	LF Impact	SUC Impact	Remarks
Free Airtime (FAT)	598.57	54.71	26.97	Annexure – 3.02
Free of Cost (FOC) Coupons/Cards/SIMs	40.62	3.61	1.58	Annexure – 3.03
Promotional offers to customers	74.76	5.88	2.88	Annexure – 3.04
Full Talk Time (FTT)	10.63	1.35	0.63	Annexure – 3.05
Negative processing fee/ Upsize /various adjustments	282.65	24.72	12.23	Annexure – 3.06
Total	**1007.23**	**90.27**	**44.29**	

On being pointed out by audit, it was stated by Management that:-

- The company offers additional talk time to its customers based on market demand/ Management decision as an additional benefit over and above the normal talk time based on various schemes run by company from time to time. Such additional talk time is known as Free Air time. FAT is provided on Start up Kit (SUK), Recharge Coupon (RC) or by way of Initial credit to prepaid customer. It is generally given during festival season to popularize new rate plans, to attract new subscribers, etc. Similarly, the amount of negative processing fee (which arises due to FAT) is in fact discount offered to the customer.
- FAT is in the nature of Planned Discount and part of Tariff plan filed with TRAI. It is given upfront to customers and such notional amount cannot be subject to LF.
- In terms of AS-9, "Revenue is the gross inflow of cash, receivable or consideration arising in the course of the ordinary activities of the enterprise from the sale of goods, from the rendering of services, and ….."
- Out of FAT/FTT/FOC, etc, as pointed out by Audit, ₹ 48.49 crore was knocked with the corresponding credit/contra/duplicate entry.

Audit views on the reply of the Management are as given below:-

- Contra entries amounting to ₹ 48.38 crore (out of ₹ 48.49 crore as stated by the management in its reply) in respect of initially commented FAT/FTT/FOC, etc. of ₹ 1055.60 crore have been considered and the figures have been accordingly revised to ₹ 1007.23 crore. Amount of ₹ 0.11 crore (₹ 48.49 crore - ₹ 48.38 crore) of management reply was not considered by audit, as this entry were not included in initially commented FAT/FTT/FOC, etc, of ₹ 1055.60 crore.
- The Management has accepted that Additional Talk Time/Free Air Time etc. was generally given during festival season to popularize new rate plans, to attract new subscribers, etc. Therefore, such offers/discounts/rebate was in the nature of expenses and hence, in terms of licence agreements should not be deducted from GR.
- The copy of the prepaid tariff plans submitted to TRAI (provided to audit), did not include any kind of FAT/discount etc. whether billable or otherwise.
- Audit is not questioning the accounting in accordance with AS-9 but contends that Airtime is not a free commodity, had an intrinsic value and by giving FAT/FTT/ FOC etc, the licensees are foregoing the revenue instead of booking these as expenses resulting in avoidance of LF and SUC.

Thus, netting off of offers/discount/rebate amounting to ₹ 1007.23 crore given to pre-paid subscribers has resulted in understatement of GR/AGR, which ultimately resulted in short payment of LF and SUC to DoT amounting to ₹ 90.27 crore and ₹ 44.29 crore respectively.

C) Short accounting of revenue due to upfront debit in the revenue heads

As per the procedure followed by the company for accounting of revenue, while the revenue received in advance was accounted under liability, the Margin/Commission paid/FAT/FOC on this amount was debited to the current revenue. Due to this, the current revenue was short accounted to the extent of Margin/Commission paid/FAT/FOC resulting in deferment of LF and SUC on this amount.

On being pointed out by audit, the Management replied that these were already covered under reply to set-off/upfront charges para {para 3.2.1(A) and (B)}. However, from the accounting perspective, the revenue is being recognized on the basis of actual usage.

Audit is not questioning the accounting on the basis of actual usage. However, the fact remains that the upfront debit of Margin/Commission paid/FAT/FOC of revenue received in advance to the current revenue results in short payment of LF and SUC on the current revenue to the extent of amount debited.

3.2.2 Under reporting of revenue due to netting off of discounts/waivers granted to post-paid subscribers

From the examination of data/records pertaining to post-paid services furnished by BAL/BHL for the period from 2006-07 to 2009-10, it was observed that –

- Waivers (Installation Charges Waiver/Air Time Waiver/Other Fees and Charges Waiver/Rental Waiver/VAS Revenue Waiver) and Rental/Airtime/other discounts were offered to post-paid customers by the company. It was also noticed that the company debited the cost of discounts and waivers to Post-paid revenue heads instead of expense heads as a result of which the revenue considered for AGR was understated by ₹ 180.74 crore and ₹ 842.12 crore respectively **(Annexures- 3.07 and 3.08)**.

- During reconciliation of revenue shown in AGR statements vis-a-vis Financial Statements of the company (TB/reconciliation statement given to audit), it was further observed that ₹ 112.93 crore was deducted from GR ab-initio to arrive at AGR on account of waivers. Detailed analysis revealed that these amounts were booked under expenditure heads pertaining to 'Waivers on account of goodwill gesture', Customer care expenditure, etc. **(Annexure - 3.09).**

- Further, Rental/Airtime/other discounts and Waivers were part of overall commercial strategy to enhance business and therefore, such offers/discounts were in the nature of expenses. Hence, in terms of licence agreements, these should not be deducted from GR.

On being pointed out by audit, it was replied that:-

- Service revenue was recognized as the services were rendered and stated net off of billable discounts, process waivers and taxes. As per Annexure-III of the licence agreement under the Norms of preparation of annual financial statements, accrued revenue shall include "all amounts billable for the period", thereby all such amounts (billable discounts, process waivers, etc.) shall be excluded from the revenue while computing the GR.
- Process waiver were being granted due to errors in billing and were not billable under the category of accrued revenue as per Annexure-III of the licence agreement, as the services have not been rendered or incorrectly billed. The process waiver (₹ 842.12 crore) included billable discount of ₹ 624.44 crore, hence the actual process waiver was ₹ 217.67 crore.
- Goodwill waivers were in the nature of discounts offered for customer retention and maintaining relationship. Although they form part of service revenue, the company has reduced the amount of such waivers in the nature of goodwill waivers from the GR.
- Billable discount are part of tariff filing with TRAI, hence not part of revenue for the purpose of AGR as per the licence agreement.
- Out of Billable discount of ₹ 206.55 crore as pointed out by audit, ₹ 25.81 crore was knocked with the corresponding credit/contra entry.

Audit views on the reply of the Management are as given below:

- Contra entries amounting to ₹ 25.81 crore in respect of initially commented discount of ₹ 206.55 crore, as stated by the Management in its reply have been considered and the figure revised to ₹ 180.74 crore.
- Norms of preparation of annual financial statements under the Licence agreement states that Service revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately. This indicates that service revenue should be shown in gross, however the Management netted off the discounts/rebate while preparing the annual financial statements which was against the licence agreement. Further, Annexure-III of the licence agreement did not indicate that discounts, waivers, etc. shall be excluded from the revenue while computing the GR.
- The contention of the Management that waiver (₹ 842.12 crore) included billable discount of ₹ 624.44 crore was not in line with the Trial Balance (TB) submitted to audit and data extracted from Oracle Finance system as analysis of head of accounts of TB as well as the data extracted from general ledgers pertaining to these waivers

clearly indicated that these were Installation Charges Waiver/Air Time Waiver/ Other Fees and Charges Waiver/Rental Waiver/VAS Revenue waivers. It was not mentioned that these entries were due to wrong billing. In respect of remaining ₹ 217.67 crore it was observed that in case of billing to the post-paid customers if it is subsequently confirmed that there was a mistake in the bill, the same was reversed/adjusted in the respective revenue codes. It was noticed that there were several reversal and adjustment entries in the general ledger to this effect. Further, the Management did not furnish any document in support of its contention that these waivers were due to errors in billing.

- The Management accepted that Goodwill waivers were in the nature of discounts offered for customer retention and maintaining relationship and although they formed part of service revenue, same was reduced from GR. Since this was a part of overall commercial strategy to enhance business, therefore, they were in the nature of expenses and set-off for related items of expenses were not allowed as per the licence agreement. Hence these should be added back to GR.
- Copy of the tariff plans submitted to TRAI (provided to audit) did not include any kind of discount, whether billable or otherwise.

Thus, netting off of discounts and waivers amounting to ₹ 1135.79 crore given to post paid subscribers resulted in understatement of GR/AGR and short payment of LF and SUC to Government of India of ₹ 104.54 crore and ₹ 49.65 crore respectively **(Annexures - 3.07, 3.08 and 3.09)**.

3.2.3 Under reporting of Roaming Revenue due to set-off of Inter Operator traffic (IOT) Discounts paid/credited to other Operators

Volume discount is a financial incentive for individuals or businesses that purchase goods/ service in multiple units or in large quantities. In telecommunications scenario, roaming agreements between operators provide for allowing discounts in case of the subscribers of a particular service provider using the 'sellers' network in bulk. Mutual allowance of discounts results in net payment of the incentive.

BAL and BHL have arrangements with other International Operators for providing roaming services. It was noticed that the Inter Operator Traffic (IOT) Discounts paid/credited to these Operators accounts was debited to/deducted from the revenue heads.

Having roaming arrangement with other national/international operators was a matter of mutual agreement between two operators and giving discounts over and above the agreed charges for roaming was part of overall commercial strategy to enhance business between the two operators. As such, these discounts were in the nature of expenses and hence, in terms of licence agreements, should not be deduced from revenue.

It was observed that Inter Operator Traffic (IOT) Discounts amounting to ₹ 165.59 crore during the period from 2006-07 to 2009-10 were debited to roaming revenue **(Annexure 3.10)**.

On being pointed out by audit, it was stated by BAL Management that:-

- International roaming transactions are in nature of agreed volume based discounts.
- International Roaming Revenue is generated based on negotiation adopted by business. Further, the Operators agree on volume of traffic to be provided amongst them on any of the methodology based on volume discount. It is in the nature of trade/volume discounts and the same should not be considered as an expense.
- Out of IOT discount of ₹ 168.24 crore (initially pointed out by Audit), ₹ 2.58 crore was knocked with the corresponding credit/contra entry, ₹ 0.07 crore was considered twice and the entries pertaining to IOT amounting to ₹ (-50.89) crore not considered by Audit.

Audit views on the reply of the Management are as given below:-

- Contra entries and duplicate reflections amounting to ₹ 2.58 crore and ₹ 0.07 crore respectively as stated by the Management in its reply have been considered and the figures have been revised from ₹ 168.24 crore to ₹ 165.59 crore (₹ 168.24 crore - ₹ 2.58 crore - ₹ 0.07 crore).
- As already brought out in the para, giving discounts over and above the agreed charges for roaming was part of overall commercial strategy to enhance business between the two operators; hence these discounts were in the nature of expenses. Since the licence agreement does not permit any netting off, such expenditure cannot be deducted and therefore, have to be included in the GR.
- Regarding non consideration of entries pertaining to IOT amounting to ₹ (-50.89) crore as mentioned in the Management reply, it was observed that these entries were of the nature of IOT receipts (viz. Vodafone IOT compensatory receipt, etc.) and not in the nature of IOT discount paid to the other operators. They were not considered by audit, as no netting off was permissible under clause 19.1 of the licence agreement.

Netting off of IOT discounts amounting to ₹ 165.59 crore **(Annexure - 3.10)** given to international roaming operators resulted in reduction of GR/AGR and short payment of LF and SUC of ₹ 15.62 crore and ₹ 7.22 crore respectively.

3.2.4 Under reporting of revenue from Infrastructure sharing with other telecom operators for GR/AGR by BAL/BHL

As mentioned in para 1.4 (a),the GR shall be inclusive of revenue from permissible sharing of infrastructure and any other miscellaneous revenue without any set-off for related item of expense, etc.

Telecom infrastructure (towers, network equipment's etc.) owned by BAL/BHL were being shared with other telecom companies. BAL/BHL entered into agreements with other telecom companies for infrastructure (cell site) sharing. In terms of the agreements entered with the other operators, charges for sharing sites recoverable from other operators was based on a percentage of CAPEX[5] cost of the sites and OPEX[6] cost incurred by BAL/BHL.

Review of data/records pertaining to Infrastructure sharing charges furnished by BAL/BHL for the period from 2006-07 to 2009-10 revealed that:-

a) Infrastructure sharing charges which were in the nature of Rent, recoverable/ recovered were booked in the revenue heads relating to Infrastructure sharing partly and the remaining were netted off from the respective expense heads.

b) Other Infrastructure sharing charges recoverable/recovered on account of Fuel (Diesel), Electricity, Repairs and Maintenance and Security were netted off from the expenses head and not included in the revenue at all.

The total amount netted off from the expense on account of site sharing revenue (Rent, Diesel, Electricity, Repairs and Maintenance and Security) during 2006-07 to 2009-10 was ₹ 224.22 crore **(Annexure – 3.11).** This amount should have been taken to GR/AGR.

On being pointed out by audit, it was replied by BAL/BHL that -

- the procedure of revenue booking in respect of Infrastructure site sharing has two elements-
    - a) OPEX Reimbursement- Commercial Power, Fuel (Diesel), Security and AMC, which was in the nature of reimbursement of actual expenses incurred, was credited under the respective head.
    - (b) CAPEX Recovery- This amount, which was in the nature of rent was recognized by Bharti Airtel under "Infrastructure Sharing Income".

It was further stated that the part of rent which was credited in the expense head was in nature of OPEX recovery only and as per AS-29, the expenses relating to a provision may be presented net of the amount recognized for a reimbursement in the Profit and Loss statement.

- It was also stated that as per TDSAT judgment of August 2007, reimbursement of cost/expenses received from other companies should not form part of AGR.

Reply of the BAL Management is not tenable due to following reasons:

- In terms of licence agreement, GR specifically includes revenue from permissible sharing of infrastructure without any set-off for related item of expense. Further,

5 Capital Expenditure
6 Operating Expenditure

licence agreements do not distinguish infrastructure sharing revenue between CAPEX and OPEX. Hence, set-off of revenue from Infrastructure sharing against the expenses is not allowed. Further, licence agreement permits only three permissible deductions and no such deduction (i.e. on account of reimbursement of costs of Infrastructure sharing) was allowed.

- TDSAT judgment dated 30 August 2007 referred in the reply was set aside by the Honourable Supreme Court vide judgement dated 11 October 2011.
- Audit is of the view that revenue towards diesel expenses, security expenses, repair and maintenance expenses and electricity charges did not constitute reimbursement since they had to be incurred irrespective of whether the towers were shared or not. In fact, by sharing the expenditure the Company benefited through additional income.

Thus, netting off site sharing revenue received/receivable from other telecom operators from the cost during the period from 2006-07 to 2009-10 resulted in understatement of GR/AGR by ₹ 224.22 crore and short payment of LF and SUC by ₹ 19.30 crore and ₹ 9.08 crore respectively by BAL/BHL **(Annexure – 3.11).**

3.2.5 Under reporting of revenue from Forex gain for GR/AGR by BAL/ BHL

As per accounting policy adopted by BAL/BHL for the years 2006-07 and 2007-08, the resultant foreign exchange differences arising on payment or conversion of liabilities were recognized as income or expense in the year in which they arise except in respect of liabilities for acquisition of fixed assets where such exchange difference was adjusted in the carrying cost of the respective fixed asset.

Further, both the companies changed their policy with effect from 1 April 2008 to charge/ credit fluctuation gain/loss in respect of loan/liabilities for acquisition of fixed assets directly to the P&L Account.

Review of data/records of BAL/BHL for the period from 2006-07 to 2009-10 revealed that the Realized gain during 2006-07 to 2009-10 was ₹ 221.58 crore out of which forex gain of ₹ 5.93 crore only was considered in GR/AGR during 2006-07 under UASL/NLD/ILD licences of BAL **(Annexure - 3.12).**

It is pertinent to mention here that the above realised gain calculated from the data extracted from the reports generated from Oracle Financial System did not represent the actual gain of that particular item since the company recasts the value of all the items included under the foreign exchange gains/losses head every year, the matured items are accounted under realised gains and the un-matured items remain under unrealised gain. Thus, the realised gain of a particular item in that year would not be the actual gain due to accounting of the gains /losses of that item during the intermediate period under unrealised. Audit could not arrive at the actual value of items accounted under realised gain every year for want of original value of each item. Further, audit has considered the quarterly net gain, head of account-wise and LSA-wise, as it was not possible for audit to segregate/collect the figures of gains only from the data made available. The operator should calculate the gain of each item with reference to its initial value of accounting and include the total forex gain in GR/AGR.

On being pointed out by audit, it was stated by the Management that:-

- **Forex Gain was not Revenue:** As per the Accounting Standard 9 on Revenue Recognition, Foreign Exchange Gain has been specifically excluded from the definition of Revenue.
- **Forex Gain was Notional:** The realized forex was nothing but an overall business risk which each company would assume in foreign currency transactions. Such notional gains/losses on account of reduction/increase in the liabilities/loans cannot be considered to be revenue from operations and should not be included in the GR/AGR.
- **Forex Gains and losses was dynamic and indeterminable:** TRAI Recommendations dated 6 January 2015 on Definition of Revenue Base (AGR) states that the revenue/profit arising on account of fluctuation of foreign exchange should not be part of AGR for the purpose of computation of LF and SUC. Also TDSAT (August 2007) did not view forex gain/loss differently from TRAI.
- **Not related to Telecom activities:** The Notional foreign exchange fluctuation was a contingency which had impact on every business and was not specific and unique to telecom business. Also, as per TRAI recommendation dated 13 September 2006 on the AGR matter, forex was not related to telecom activities.
- Further, BAL intimated that ₹ 73.49 crore was the amount of realised forex gain during the years from 2006-07 to 2009-10.

Reply of the management is not tenable as -

- In terms of the licence agreement GR shall be inclusive of any other miscellaneous revenue and audit is of the view that any gain incidental to PSPs should be considered for GR.
- The company has been following mercantile method of accounting and as per commercial principle of accounting, "the profit/loss" is to be arrived after taking into account all accrued receipts and expenses and comparing of trading assets between two different dates. Under the mercantile system of accounting a forex gain (revenue)/loss (expenditure) incurred as a result of exchange differences are rational and cannot be considered as contingent/notional in nature. Further, audit has considered the realised gain only.

- Even as per accounting policy adopted by BAL/BHL during the years from 2006-07 to 2009-10, the resultant foreign exchange differences arising on payment or conversion of liabilities are recognized as income or expense in the year in which they arise. Further, company was reporting exchange differences (on net basis) in their financial statement.

- TDSAT judgment dated 30 August 2007 and TRAI recommendation dated 13 September 2006 referred in the reply has no relevance in the light of the Hon'ble Supreme Court judgement dated 11 October 2011 which stated "the TRAI and the Tribunal had no jurisdiction to decide on the validity of the definition of AGR in the licence agreement and to exclude certain items of revenue which were included in the definition of AGR in the licence agreement between the licensor and the licensee". Audit is of the view that forex gain is incidental to telecom activity for telecom operators.

- It is not true that foreign exchange gains/losses are neither covered in the definition of GR in the Licence Agreement nor disclosed in the Statement of AGR, as Licence Agreement provides that "GR shall be inclusive of …… any other miscellaneous revenue, without any set-off for related item of expense, etc," and forex gain was part of Miscellaneous Revenue.

- TRAI Recommendation dated 6 January 2015 referred to in the reply has not finally been accepted by DoT.

- Aforesaid realised forex gain of ₹ 73.49 crore has been arrived by the TSP after considering yearly net gain only of all the account codes booked for forex gain/loss in a business unit/licences. However, audit considered the quarterly net gain LSA-wise as the LF and SUC are payable LSA-wise every quarter and hence, the difference in figures.

Thus, non-inclusion of foreign exchange gains pertaining to period from 2006-07 to 2009-10 resulted in understatement of GR/AGR by ₹ 216.84 crore. Resultantly, LF and SUC amounting to ₹ 17.46 crore and ₹ 6.74 crore respectively was not paid by BAL/BHL **(Annexure - 3.12).**

3.3 Under reporting of revenue in the Statements of Revenue and LF (AGR Statements) though reported in the books of accounts.

3.3.1 Non consideration of Interest Income for GR/AGR.

Review of data/records furnished by BAL/BHL for the period from 2006-07 to 2009-10 revealed that interest income accounted in the books of accounts of BAL was partially considered for GR/AGR in the years 2006-07 and 2007-08 but not considered at all in the years 2008-09 and 2009-10. Amount of interest income accounted in the books were ₹ 340.74 crore out of which ₹ 1.61 crore only was considered for GR/AGR during 2006-07 to 2009-10 resulting in non-consideration of interest income amounting to ₹ 339.13 crore for the purpose of GR/AGR. Business unit/ licences wise details are furnished in **Annexure 3.13**.

Similarly, interest income accounted in the books of accounts of BHL was fully considered for GR/AGR in the year 2006-07 and partially considered in the year 2007-08 but not considered at all in the years 2008-09 and 2009-10. In the year 2007-08, out of total interest income of ₹ 2.37 crore accounted, ₹ 1.74 crore was considered for GR/AGR and ₹ 0.63 crore was not considered. In the years 2008-09 and 2009-10, interest earned amounting to ₹ 1.23 crore and ₹ 3.96 crore were not considered for GR/AGR.

BHL Management stated that –

- Interest income accounted under corporate trial balances (TBs) was not considered as it was not related to telecom operations. It further stated that the interest accounted in the corporate TBs was earned from deployment of surplus funds/borrowed funds and it being a non-telecom revenue needed to be excluded from AGR.
- It also stated that sometimes funds borrowed for CAPEX were invested and interest earned and this interest being always less than the interest payable/paid on borrowings, no interest income was left for inclusion in AGR for levy of revenue share.
- Considering the TDSAT judgement dated 30 August 2007, interest income accounted under Trial balances of UASL/NLD/IP1/ILD/ISP/VSAT were not considered for AGR.

BAL/BHL's Management contention for non-inclusion of interest income for AGR is not tenable as

- Audit is of the view that definition of GR in licence agreements expressly provides for inclusion of interest income for GR/AGR for computation of revenue share;
- TDSAT judgement dated 30 August 2007 has become null and void after Honourable Supreme Court judgement dated 11 October, 2011.

Thus non-inclusion of Interest income pertaining to period from 2006-07 to 2009-10 resulted in understatement of GR/AGR by ₹ 344.95 crore. Impact on short payment of LF and SUC due to non-consideration of interest income in GR/AGR was ₹ 28.51 crore and ₹ 11.80 crore respectively **(Annexure - 3.13).**

3.3.2 BAL's interest free loan to subsidiary resulted in avoidance of payment of LF/SUC

Audit observed that BAL gave ₹ 1487.95 crore as interest free un-secured loan in 2009-10 to M/s Bharti Telemedia Ltd (BTL), a 95 *per cent* subsidiary of the BAL. Grant of interest free unsecured loan was in violation of Section 372(A) of Companies Act, 1956 and not in line with the arm's length relation to be maintained between the holding company and subsidiary company.

As a result, BAL's revenue was lower by the amount of interest receivable from BTL and ultimately the LF and SUC thereon was short-paid to the Government of India to that extent. The impact on short payment of LF and SUC could not be quantified since the date of release of loan and period for which above interest free loan remained outstanding was not available.

3.3.3 Non consideration of Profit on sale of Investment for GR/AGR for payment of revenue share by BAL.

Format of Statement of Revenue and LF (AGR Statement) prescribed as Appendix II to Annexure -II as referred in Clause 20.4 of the UASL agreement is an integral part of the Licence Agreement. In the Statement, item 4 has been prescribed to reflect the "Income from Investment".

Review of data/records furnished by BAL/BHL for the period from 2006-07 to 2009-10 revealed that gross income on account of Income from Investments were ₹ 34.14 crore, ₹ 57.75 crore, ₹ 235.48 crore and ₹ 183.82 crore in the year 2006-07, 2007-08, 2008-09 and 2009-10 respectively (**Annexure - 3.14**). Above income had not been considered in GR/AGR for computation of revenue share.

BAL Management stated that considering the TDSAT judgement dated 30 August 2007, income from investment accounted under corporate trial balance was not considered for AGR. It further stated that this corporate income was generated from treasury function which was a separate and distinct function from licenced activity and this income was a non-licenced activity/non-operational income. Therefore such corporate income should not form part of GR.

BAL's Management contention for non-inclusion of income from investment for GR is not tenable as TDSAT judgement dated 30 August 2007 became null and void after Honourable Supreme Court judgment of 11 October 2011. Further, Audit opined that licence agreements provide for inclusion of income from investment in GR/AGR for computation of revenue share.

Thus non-inclusion of Income from investment pertaining to period from 2006-07 to 2009-10 resulted in understatement of GR/AGR by ₹ 511.19 crore. Impact on short payment of LF and SUC due to non-consideration of income from investment in GR/AGR was ₹ 42.45 crore and ₹ 17.45 crore respectively **(Annexure - 3.14).**

3.3.4 Different standards for payment of dividends

As mentioned in para 1.4 (a) GR shall be inclusive of dividend along with other revenue stated therein. Thus the revenue from investment (dividend) was to be included for the purpose of revenue share. An analysis of the annual accounts of BAL for the period from 2006-07 to 2009-10 indicated that BAL's investments in form of equity shares in its subsidiaries, Joint Ventures, associates and others **(Annexure - 3.15)** increased by more than 19 times from ₹ 580.24 crore in 2006-07 to ₹ 11,153.51 crore in 2009-10 **(Annexure - 3.16).**

BAL was the majority shareholder in most of these subsidiaries, Joint Ventures, associates, subsidiary's subsidiary and other entities. However, BAL did not receive any return on these investments during this period in form of dividend or otherwise in spite of the fact that the total profit of these companies after tax was ₹ 157.04 crore, ₹ 415.64 crore, ₹ 905.44 crore and ₹ 893.68 crore during each of the four years from 2006-07 to 2009-10 respectively **(Annexure - 3.17).**

It was seen in audit that BAL had adopted different standards for declaration of dividend in respect of BAL itself and for other non-licensee companies where it had investments and majority shareholdings. While BAL had declared a dividend of 20 *per cent* on face value of shares for 2008-09 and 2009-10, no dividend was declared by any of the subsidiaries, Joint Ventures, associates and others where BAL had a majority shareholding. While dividend paid by BAL was an expense for it and was not subject to LF and SUC, the dividends received by it from companies/entities it had invested in would have attracted imposition of LF and SUC as per terms of the licence agreement.

Thus non-declaration of dividend by subsidiaries, Joint Ventures, associates and other entities in which BAL had invested was not in accordance with BAL's own action of declaration of dividend and resulted in reduction of revenue of BAL and consequently lower payment of LF and SUC.

3.3.5 Non Consideration of revenue accounted under Global Operations (BILGO) for LF

BAL had set up its own branch at USA under brand name BILGO which carries the hubbing of traffic and does the switching of traffic arising out of bilateral agreements between BAL (ILD division) and various foreign operators located across the globe. BAL maintains a separate book of accounts to book the income/expenses relating to BILGO. The details of the operation carried out by BILGO and mechanism between the two segments (BILGO and BAL-ILD) are as follows-

(a) For call traffic originating from USA – BILGO switch hands over the outgoing traffic from other operator's to BAL-ILD's network for terminating anywhere in the world. For this service, BILGO retains five per cent and transfers 95 per cent of the amount billed to the foreign telecom operators to BAL – ILD.

(b) For call traffic terminating in the USA – BILGO switch handles the call traffic from BAL-ILD and hands over the same to other operators in the USA. For this service, BILGO charges to BAL-ILD at 105 *per cent* of what is payable by BILGO to the foreign terminating operators and retains five *per cent*.

However it was noticed that during 2006-07 and 2007-08, this margin was 2.87 *per cent* and 4.03 *percent* only. Amount of revenue and access charges booked in BILGO's books of accounts are as follow-

Table 3.6

(₹ in crore)

Year	Total revenue	Total Access Charges	Excess revenue over access charge (Margin)	Margin (in *per cent*) {Percentage of "d" w.r.t "c"}
(a)	(b)	(c)	(d)	(e)
2006-07	285.48	277.51	7.97	2.87
2007-08	340.73	327.53	13.20	4.03
2008-09	230.10	218.76	11.34	5.18
2009-10	312.62	297.23	15.39	5.18
Total	**1168.93**	**1121.03**	**47.90**	**4.27**

Revenue over access charges amounting to ₹ 47.90 crore was not considered for GR/AGR.

BAL's Management stated that –

- BILGO was operating on a foreign soil (USA) as a gateway station (POP) for which licence/permission had been obtained from USA authorities, not from Indian authorities and it had a separate identity from US Tax and regulatory perspective and
- This five *per cent* retention by BILGO was taxable in the USA as per Tax and regulatory laws. As such revenue and access charges accounted in BILGO's books of accounts should not be considered for GR/AGR for LF.

BAL's Management contention is not tenable as:

- Setting up of the BILGO is only a technical arrangement made by BAL to manage its ILD traffic and BAL had got ILD licence from the Indian authorities. BAL is providing telecom service under the name of BILGO and was not a separate legal entity. Even the transactions accounted in BILGO's books of accounts are part of telephone traffic of BAL's ILD network and included in the financial statements of BAL. Further, as per the definition of GR, GR shall include all revenue accruing to the Licensee without any set-off for related item of expense. Hence the revenue of BILGO should be included for GR.

- Audit does not dispute the taxability of five *per cent* retained by BILGO in USA as per Tax and regulatory laws but contends that since this constituted the income of BAL, the same should be a part of the sharable revenue under ILD licence.

Accordingly, BAL's ILD AGR was under reported by ₹ 47.90 crore (₹ 7.97 crore, ₹ 13.20 crore, ₹ 11.34 crore and ₹ 15.39 crore for the years 2006-07, 2007-08, 2008-09 and 2009-10 respectively) which should be added back to AGR for computation of LF for BAL's ILD licence. Impact on short payment of LF (ILD) due to non-consideration of BILGO revenue was ₹ 2.87 crore (₹ 0.48 crore, ₹ 0.79 crore, ₹ 0.68 crore and ₹ 0.92 crore for the years 2006-07, 2007-08, 2008-09 and 2009-10 respectively).

3.3.6 Non Consideration of revenue of erstwhile SBEL

Satcom Broadband Equipment Limited (SBEL) was a subsidiary of BAL prior to 1 October 2005. SBEL was in the business of selling VSAT hardware. SBEL got amalgamated with BAL effective from 1 October 2005 as per certificate of registration received on 27 July 2007. Though SBEL was amalgamated with BAL, BAL maintained separate trial balances for accounting transactions relating to erstwhile SBEL's domestic and international transactions. The total revenue amounting to ₹ 116.24 crore booked under these trial balances was not considered for GR/AGR under any licence during the period from 2006-07 to 2009-10 except in the year 2008-09 when Service Revenue amounting to ₹ 0.18 crore was considered in the GR of VSAT.

BAL's Management stated that SBEL was incorporated as a separate legal entity and prior to its merger with BAL, it was engaged in –

i) trading in telecom equipment,

ii) trading in VSAT equipment across the world, and

iii) turn-key project for VSAT installations.

These are mainly trading and international activities and not governed by the Telecom licence. Post-merger, the accounts of BAL included the accounts for activities undertaken by Satcom for which separate books of accounts were maintained. Further, the activities carried on by Satcom are not linked with the telecom services being provisioned by units of BAL. Activities were continued to be carried on by Satcom under BAL as were being carried on prior to merger. Management further stated that merger changed the structure of the entity but it did not change the nature of transaction being carried on. An activity which was a non-licenced activity cannot become a telecom service post merger. Thus, just because two companies have merged does not make a non-telecom activity a telecom activity thereby subjecting it to LF. Post-merger, its business (which is non-telecom in nature) was being carried on by BAL. Thus, the company is under no obligation to pay LF on such activities/transactions as were carried on by Satcom.

Reply of the Management is not tenable as SBEL was a separate legal entity prior to 1 October 2005 and it had not got any licence from Government of India for its activities which were primarily dealing in VSAT equipment. However, it got merged with BAL with effect from 1 October 2005 and transactions recorded in its books of accounts show that revenue accounted are from telecom services (bandwidth charges, IRU charges, installation charges, data services, equipment rental etc.) as well as sales of hardware to foreign/ domestic telecom companies. This revenue also formed part of revenue of BAL and in terms of definition of GR, GR shall include all revenue accruing to the Licensee without any set-off for related item of expense. Accordingly the revenue of ₹ 20.85 crore, ₹ 36.04 crore, ₹ 22.70 crore (out of it ₹ 0.18 crore already considered) and ₹ 36.65 crore accounted under the books of accounts for the years 2006-07, 2007-08, 2008-09 and 2009-10 of erstwhile SBEL should be included in the GR. Impact on short payment of LF (VSAT) due to non-consideration of revenue booked in erstwhile SBEL accounts was ₹ 1.25 crore, ₹ 2.16 crore, ₹ 1.35 crore and ₹ 2.20 crore for the year 2006-07, 2007-08, 2008-09 and 2009-10 respectively.

3.3.7 Non consideration of revenue accounted under Infrastructure Provider (IP)-1 service for computation of revenue share by BAL

BAL had got two registrations for Infrastructure Provider 1 (IP1) from DoT (October 2000 and February 2001)[7] for providing infrastructure services. The scope of services under IP1 registration covers the business of providing assets such as Dark Fibre, Right of Way, Duct Space and Towers on lease/rent out/sale basis to Telecom licensees. However, BAL had maintained separate books of accounts (TBs) for recording transactions of IP1 services. Revenues booked under IP1 include Service Revenue, Interest Income and Other Income which form part of Profit and Loss Account of BAL. Further, service revenue for the period from 2006-07 to 2009-10 pertaining to IP1 services (₹ 435.73 crore) includes revenue from BAL's NLD division (₹ 221.40 crore), ISP division (₹ 9.13 crore) and from other operators (₹ 205.20 crore).

However, the whole service revenue accounted under IP1 Trial Balances was not considered for AGR for payment of LF despite the fact that this revenue formed part of revenue of BAL and in terms of definition of GR, it shall include all revenue accruing to the Licensee without any set-off for related item of expense.

BAL's Management stated that the IP1 registration had nothing to do with the licence agreement and the activities taken there under. The IP1 registration enables any company incorporated in India to install and provide passive infrastructure to the Telecom Service Providers and as per the existing policy, there was no imposition of LF on the companies

7 Original registrations were in favour of Bharti Telesonic Limited (BTSOL) and Bharti Telenet Limited (BTL). Bharti Telesonic Limited and Bharti Telenet Limited were subsumed in BAL {Formerly Bharti Televenture Limited (BTVL)}.

having IP1 registration. The income earned from these services was accounted for separately which therefore resulted in separate trial balances maintained by the company so as to distinguish the same from other licenced income.

Audit accepts that the revenue from NLD division included in IP1 revenue is not subject to LF but contends that income from ISP division and other operators should be considered for revenue sharing. Accordingly, ₹ 214.33 crore (₹ 47.03 crore, ₹ 54.01 crore, ₹ 65.26 crore and ₹ 48.03 crore for the years 2006-07, 2007-08, 2008-09 and 2009-10 respectively) should have been considered in AGR for the calculation of LF. Impact on short payment of LF (NLD) due to non-consideration of IP1 revenue was ₹ 12.86 crore (₹ 2.82 crore, ₹ 3.24 crore, ₹ 3.92 crore and ₹ 2.88 crore for the years 2006-07, 2007-08, 2008-09 and 2009-10 respectively).

3.3.8 Non consideration of miscellaneous income for AGR for computation of LF/SUC by BAL

As per schedule of Other Income forming part of Profit and Loss Account of BAL, Miscellaneous Income for the years 2006-07, 2007-08, 2008-09 and 2009-10 was ₹ 79.87 crore, ₹ 200.61 crore, ₹ 87.08 crore and ₹ 45.28 crore respectively. Service area wise details of such miscellaneous income are furnished in the **Annexure - 3.18**. From the AGR statements vis-à-vis Trial Balances/Reconciliation statements furnished to audit, it was noticed that an amount of ₹ 96.19 crore being the miscellaneous income was not included in GR/AGR for computation of revenue share.

BAL's Management stated that -

- Miscellaneous income on account of insurance claim, notice pay, scrap sale in UASL and NLD/ILD/ISP/VSAT/Corporate segments was not included in GR/AGR as per TDSAT judgment of August 2007.
- It is an income from non-licenced activity.
- Miscellaneous/Other Income (insurance claim) of 2006-07 of UASL segment is not subject to LF as it is a capital receipt and it cannot be termed as revenue in ordinary course of business.
- Miscellaneous income of ₹ 2.37 crore in 2006-07 in ISP and VSAT segment were in the nature of liability written back.

Audit view on the management reply is as follows:-

- Income from insurance claim has been excluded and the Miscellaneous income considered by audit revised from ₹ 140.21 crore to ₹ 96.19 crore.
- TDSAT judgment of August 2007 was set aside by the Hon'ble Supreme Court of India (October 2011)

- Management contention that these miscellaneous incomes are from non-licenced activity and hence not liable to be included in AGR is not acceptable since definition of GR expressly provides that miscellaneous income should be included in GR for computation of revenue share.
- ₹ 2.37 crore had been booked in miscellaneous Income in Trial Balances of 2006-07 related to ISP and VSAT segments. Whereas amount in the nature of liability written back were booked in separate account heads. Hence, it cannot be stated to be in the nature of liability written back.

As such, items of miscellaneous income as stated above amounting to ₹ 96.19 crore not considered in respective AGR should be included in AGR for computation of LF/SUC. Impact on short payment of LF and SUC due to non-consideration of miscellaneous income in GR/AGR was ₹ 6.94 crore and ₹ 1.74 crore respectively **(Annexure - 3.18).**

3.3.9 Non consideration of Income from profit on sale of fixed assets for AGR for payment of revenue Share by BAL

From the examination of data/records furnished by BAL/BHL for the period from 2006-07 to 2009-10, it was observed that revenue on account of "Profit on sale of Fixed Assets" was ₹ 8.75 crore, ₹ 12.04 crore, ₹ 7.24 crore and ₹ 1.92 crore during the years 2006-07, 2007-08, 2008-09 and 2009-10 respectively.

From the AGR Statements, it was found that amount of Profit on Sale of Fixed Assets was considered for computation of AGR in the year 2006-07 but such income of ₹ 21.20 crore was not considered for AGRs in the later three years i.e. 2007-10.

BAL's Management stated that -

- Considering the TDSAT judgement dated 30 August 2007, the revenue on account of profit on sale of fixed assets had not been considered for AGR.
- This revenue was in nature of capital revenue and it was not derived from licenced activity and hence it should not be included in AGR for computation of LF.

The contention of the BAL's Management is not tenable since-

- TDSAT judgement dated 30 August 2007 has become null and void after Hon'ble Supreme Court judgment dated 11 October 2011.
- Licence agreements did not differentiate between licenced activity and non-licenced activity. In terms of definition of GR, GR shall include all revenue accruing to the Licensee without any set-off for related item of expense and the company had also considered it for inclusion in AGR in the year 2006-07. Thus, income of ₹ 21.20 crore on account of profit on sale of fixed asset accounted in the books of accounts

of the company should be included in GR/AGR for computation of Revenue Share payable by the company to Government of India.

Impact on short payment of LF and SUC due to non-consideration of profit on sale of fixed asset in GR/AGR was ₹ 1.91 crore and ₹ 0.83 crore respectively **(Annexure - 3.19).**

3.4 Short/ non-payment of revenue share due to other issues.

3.4.1 Irregular Deduction of Bad debts written off from GR to arrive at AGR by BAL/BHL

Review of data/records furnished by BAL/BHL for the period from 2006-07 to 2009-10 revealed that the amount of "Bad debts Written Off" accounted during the year 2006-07 to the tune of ₹ 105.51 crore in UASL segment had not been deducted from GR to arrive at AGR. However, in the years 2007-08, 2008-09 and 2009-10, "Bad debts Written Off" accounted in UASL segment of ₹ 181.13 crore, ₹ 63.18 crore and ₹ 41.13 crore respectively was deducted while arriving at AGR.

Similarly, as per AGR Statements and TBs of BHL, it was found that no amount of "Bad debts Written Off" had been deducted from GR in 2006-07 and 2007-08. However, in the years 2008-09 and 2009-10, amount of "Bad debts Written Off" accounted in UASL/CMTS segments of ₹ 2.25 crore and ₹ 0.03 crore was deducted while arriving at AGR.

Management stated that -

- Considering the TDSAT judgement dated 30 August 2007, the amount of "Bad debts Written Off" had been deducted from GR.
- Bad debt was revenue not realized by the company and as per AS-9, revenue includes gross inflow of economic benefits received and receivable by the entity on its own account.
- When a particular receivable is known to be bad and unrecoverable, such bad debts during the particular period must be excluded from GR.

The contention of the Management is not tenable since

- TDSAT judgement dated 30 August 2007 has become null and void after Hon'ble Supreme Court judgment dated 11 October 2011.
- While audit does not question accounting as per AS-9, it contends that any amount of revenue becoming unrecoverable is treated as bad debts which form part of Administrative and other expenses in the Profit and Loss Account.
- The licence agreement does not provide deduction of bad debt from GR to arrive at AGR. The licensee itself did not deduct the bad debts written off from GR to arrive at AGR during the year 2006-07 and 2007-08.

Thus, bad debts written off amounting to ₹ 287.72 crore and deducted from GR to arrive at AGR in UASL/CMTS segments should be added back to AGR for computation of Revenue Share payable by the companies to DoT. Impact on short payment of LF and SUC due to deduction of bad debts from GR to arrive at AGR was ₹ 25.55 crore and ₹ 11.44 crore respectively **(Annexure - 3.20).**

3.4.2 PSTN Deduction claimed against Leased Line Charges in 2006-07.

Review of data/records furnished by BAL/BHL for the period from 2006-07 to 2009-10 revealed that Lease Line charges payable by UASL Circles (Mobile and Fixed services) of BAL/BHL to BAL's NLD division was claimed under PSTN deduction in the year 2006-07 to the tune of ₹ 327.09 crore. LSA wise details are furnished in the **Annexure - 3.21**.

Management stated that in terms of TRAI's Interconnect Usage Charges Regulation (sixth amendment) (February 2006), TSPs have been given liberty to decide carriage charges to be paid to NLDO and hence they are under forbearance. TRAI has left the rates to be charged on the mutual agreement between the service providers based on various service elements being offered by NLDO which may include some fixed/minimum commitment in terms of traffic minutes and creation of Point of Interconnection (POI). It was also stated that the above transactions were in nature of a minimum commitment charge which can be attributable to minute based carriage charge and the charges for setting up the POI.

The reply of the Management is not acceptable as in terms of UASL agreement (clause 19.2) and clarifications issued by DoT, lease line charge is not to be deducted from GR to arrive at AGR. Further, TRAI Interconnect Usage Charges Regulation (sixth amendment) provides that carriage charges per minute for long distance calls within India would be as per mutual agreement between the service providers subject to a ceiling of ₹ 0.65 per minute irrespective of the distance. As evident, it does not mention about any fixed/minimum commitment charges but prescribes only minutes' based charges which were claimed as IUC deduction payable to NLD in addition to above mentioned lease line charges. Also, the BAL/BHL themselves stopped claiming such deduction from 2007-08 onwards.

Inclusion of Lease Line Charges under PSTN deduction resulted in understatement of AGR of UASLs of BAL/BHL by ₹ 327.09 crore for the year 2006-07. Resultantly, LF and SUC was short paid in the year 2006-07 by ₹ 26.47 crore and ₹ 11.71 crore respectively in respect of BAL and ₹ 1.56 crore and ₹ 0.92 crore respectively in respect of BHL **(Annexure - 3.21).**

3.4.3 Non consideration of revenue from sale/lease of bandwidth charges for AGR for payment of SUC.

UASL agreement provides that "While calculating AGR for limited purpose of levying Spectrum Charges based on revenue share, revenue from Wireline Subscribers shall not be taken into account". Further, in the format of statement of revenue and licence fee (AGR Statement) prescribed for the UASL agreement-

- Item 1 A has been prescribed to reflect the "Revenue from Wireline Subscribers" and
- Item 8 has been prescribed to reflect the "Revenue from sale/lease of bandwidth, links, R and G cases, turn key projects etc."

During the review of the AGR Statements, it was noticed that "Revenue from sale/ lease of bandwidth, links, R and G cases, turn key projects etc." amounting to ₹ 93.29 crore, ₹ 98.67 crore, ₹ 188.57 crore and ₹ 92.81 crore in the years 2006-07, 2007-08, 2008-09 and 2009-10 respectively was included in the AGR Statements for computation of LF but not considered in the AGR for computation of SUC which was in contravention of the provisions of the Licence agreements. LSAs wise details are furnished in the **Annexure - 3.22.**

Management stated that above revenue were pertaining to wireline services and hence it was not considered for levy of spectrum charges.

Management contention is not tenable as in terms of clause of 18.3 of UASL agreement, revenue from wireline subscribers only needs to be excluded for spectrum charges. As provided in the AGR statement, revenue from wireline subscriber is in item 1A and Revenue from sale/lease of bandwidth, links, R and G cases, turn key projects, etc. is in item 8. Thus, revenue from sale/lease of bandwidth is different from revenue from wireline subscribers. As such, above revenue should be considered for computation of spectrum charges also.

Thus, revenue from sale/lease of bandwidth, links, etc. amounting to ₹ 473.34 crore should be added back in AGR for computation of SUC. Resultantly, SUC amounting to ₹ 20.70 crore was not paid on the said revenue by the company **(Annexure-3.22).**

3.5 Transfers of telecom infrastructure assets by BAL to its subsidiary (BIL) at NIL value

M/s Bharti Infratel Limited (BIL) was incorporated as a subsidiary of BAL on 30 November 2006 with the object of inter-alia, setting up, operating and maintaining wireless communication towers, provide network development services and to engage in video, voice, data and internet transmission business in and out of India. BIL received the certificate of commencement of business on 10 April 2007 from the Registrar of Companies.

Audit observed from BAL's Annual Report for the year 2007-08 that the Scheme of Arrangement[8] between BAL and BIL was approved by the Hon'ble High Court of Delhi

8 Under sections 391 to 394 of the Companies Act, 1956, for transfer of telecom infrastructure assets from BAL to BIL

on 26 November 2007 and filed with the Registrar of Companies, Delhi and Gurgaon on 31 January 2008 i.e. the Effective Date of the Scheme. Pursuant to the scheme, the telecom infrastructure of BAL was transferred to and vested with BIL with effect from 31 January 2008. BAL transferred the Telecom Infrastructure worth ₹ 5739.60 crore to BIL at Nil value and BIL recorded the value of assets received from BAL at fair value of ₹ 8235.97 crore.

BAL and BIL being separate entities and also BIL was not a fully held subsidiary of BAL[9], transfer of assets was not a transaction at arm's length. As the market value of the assets was ₹ 8235.97 crore as revalued by BIL, the difference between the book value and the value as accounted by BIL was profit foregone (₹ 2496.37 crore) on transfer of asset. In accordance with licence agreement, this profit foregone on transfer of asset should be considered for computation of LF and SUC.

Thus non consideration of the amount of ₹ 2496.37 crore resulted in short payment of LF and SUC of ₹ 226.40 crore and ₹ 108.52 crore respectively for the year 2007-08 (**Annexure 3.23).**

3.6 Interest on short/non-payment of LF and SUC

On issues raised above (from paras 3.2 to 3.5) short/non-payment of LF and SUC worked out to ₹ 719.46 crore and ₹ 347.49 crore respectively. The interest on this short/non-payment of LF and SUC is ₹ 1584.94 crore **(Annexure- 3.24).** The calculation of interest was based on the rate prescribed in the Licence agreement i.e. 2 *per cent* above the Prime Lending Rate of State Bank of India existing as on the beginning of the financial year and the period considered for the calculation was from the end of the concerned financial year up to March 2015. The interest has been compounded monthly as prescribed in the licence agreement.

3.7 DoT's response to the audit observations

Audit observations on the revenue shared by M/s BAL were communicated to DoT in May 2015. DoT in reply (January 2016) informed that demands for understatement of GR were raised on the PSP in 2012 for the years 2006-07 and 2007-08, based on the report of Special Audit conducted in 2009. These pertained to issues raised in paras on commission/discount to dealers netted off from revenue and free airtime given to prepaid subscribers not recognized as revenue (3.2.1(A)); understatement of GR due to non-inclusion of revenue from infrastructure sharing in full (3.2.4); under reporting of revenue due to non-inclusion of revenue/income in GR/AGR from forex gain (3.2.5), interest income (3.3.1), profit from sale of investment (3.3.3), revenue from BILGO (3.3.5), revenue from IP-1 services (3.3.7), miscellaneous revenue (3.3.8), profit on sale of assets (3.3.9); deduction of bad

9 BAL was holding only 92.89 *per cent* of the Share in BIL as on 31 March 2008.

debts from GR (3.4.1) and gain on successive transfer of passive infrastructure (3.5). However, the demands were challenged by the operator in TDSAT/High Courts. It was also informed that action would be taken as and when the final court judgement would be pronounced.

Thus, DoT, without disputing the issues raised by Audit, has stated that the demands could not be realized as the matter was *sub-judice*. The fact that DoT could not get/obtain the revenue due indicated to the need for a more pro-active approach on part of DoT as substantial amount of government revenue was involved.

DoT also stated that there were differences in the amounts objected to by DoT consequent to the Special Audit and that pointed out by CAG audit. These variations may be on account of differences in methodology adopted in quantifying the understatement of revenue for which details of working paper of Special Auditors were not seen by CAG audit. However, CAG audit has quantified the amount of short/non realization of revenue (LF and SUC) on the basis of the actual entries identified through clear description in the books of accounts of BAL for 2006-07 to 2009-10.

In respect of paras pertaining to netting off of discount/waiver given to post paid subscribers from revenue (3.2.2); roaming revenue understated due to netting off inter-operator traffic discount paid to other operators (3.2.3) and non-inclusion of revenue of erstwhile SBEL (3.3.6), DoT stated that replies received from the PSP were under examination.

In respect of paras pertaining to different standards for payment of dividends (3.3.4); irregular deduction claimed for lease line charges (3.4.2) and non-consideration of bandwidth charges for SUC (3.4.3), it was stated that replies from respective wings of DoT were awaited.

In respect of para pertaining to interest free loan to subsidiary (3.3.2), it was stated that DoT had taken a decision in 2005, in consultation with Ministry of Law and learned AG, that notional interest can neither be reckoned nor included in AGR.

Audit view is that DoT's decision of not reckoning the due interest on interest free loan given to subsidiaries which are not fully owned, for AGR purpose was not in line with the provisions of the Companies Act, 1956. By providing interest free loan to other than fully owned subsidiary, BAL's revenue was lower by the amount of interest receivable and ultimately the LF and SUC thereon was short-paid to the Government of India to that extent.

DoT's response to para 3.2.1 (B) and (C) on under reporting of revenue due to offers/ discounts to customers and dealers for pre-paid services and short reporting of revenue due to upfront debits in revenue heads was awaited (January 2016).

DoT also stated that the basic definition of GR and AGR was challenged by the TSP's in 2002-03. Since then, there has been protracted litigation and is continuing till date. Also, some of the licensees have also filed (in 2012) writ petitions before various High Courts invoking the writ jurisdiction under Article 226 of the Constitution challenging the Section-4 of Indian Telegraph Act, 1885, as violative of the Article14 and 19(1) (g) of the Constitution of India. The process of deduction verification by the CCA offices and the LF assessment work by the DoT Headquarters was adversely impacted due to this. DoT admitted that the numerous disputes are causing delays in assessment of the revenue share due from the operator.

The response of DoT proves that though the revenue share regime was introduced as part of NTP-1999, the Department has not been able to realise its due revenue share as envisaged in the Licence agreement even after more than 16 years of its implementation.

It would be pertinent to mention here that when the Government decided to reduce the LF for all operators by two *per cent* effective from April 2004, DoT expected that the reduction would prompt operators to withdraw the challenges against the Government. However, the reduction in LF did not have the expected impact and the operators continue to institute litigations against the Government challenging the definition of GR/AGR and demand notes. Thus the PSP got the benefit of reduction in rate of LF but the Government didn't get the reciprocal benefit of reduction in litigations.