CHAPTER I

Introduction

1.1 Revenue sharing regime and its salient features

The New Telecom Policy-1999 (NTP-99), which came into effect from April 1999, introduced the revenue sharing regime in the Indian Telecom sector. Under this system, telecom service providers who hold licenses issued by the Department of Telecommunications (DoT) to provide telecom services viz., Unified Access Services (UAS), National Long Distance (NLD) services, International Long Distance (ILD) services, Very Small Aperture Terminal (VSAT) service and Internet Services are required to pay a percentage of their Adjusted Gross Revenue (AGR) as annual licence fee to the Government. The license agreement between the Department of Telecommunications (DoT) and the service providers defined the Gross Revenue (GR) and the AGR for payment of the revenue share. While the rates of license fee (LF) payable were linked to the type of service and the category of service area[1] where the service was offered till 2012-13, a uniform rate of LF for all services irrespective of the category of service area was introduced with effect from 1 April 2013.

The following table depicts the category of services and percentages of LF applicable.

Table-1.1

<table>
<tr><th rowspan="2">Type of license</th><th rowspan="2">Category of service area</th><th rowspan="2">Name of service area</th><th rowspan="2">2010-11</th><th rowspan="2">2011-12</th><th colspan="2">2012-13</th><th rowspan="2">2013-14 & 2014-15</th></tr>
<tr><th>01.04.12 to 30.06.12</th><th>01.07.12 to 31.03.13</th></tr>
<tr><td rowspan="3">UAS</td><td>A</td><td>Delhi, Mumbai, Kolkata, Tamil Nadu (incl. Chennai), Andhra Pradesh, Gujarat, Karnataka, Maharashtra</td><td colspan="2">10</td><td>10</td><td>9</td><td rowspan="8">8</td></tr>
<tr><td>B</td><td>Haryana, Kerala, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh (E), Uttar Pradesh (W), West Bengal</td><td colspan="2">8</td><td>8</td><td>8</td></tr>
<tr><td>C</td><td>Assam, Bihar, Himachal Pradesh, Jammu & Kashmir, North East, Odisha</td><td colspan="2" rowspan="5">6</td><td rowspan="5">6</td><td rowspan="5">7</td></tr>
<tr><td>NLD</td><td colspan="2">All India</td></tr>
<tr><td>ILD</td><td colspan="2">All India</td></tr>
<tr><td>VSAT</td><td colspan="2">All service areas</td></tr>
<tr><td>ISP-IT</td><td colspan="2">All service areas</td></tr>
<tr><td>ISP</td><td colspan="2">All service areas</td><td colspan="2">₹1 only</td><td>₹1 only</td><td>4</td></tr>
</table>

[1] The country was divided into 23 service areas consisting of 19 telecom circles and 4 metro circles. Subsequently, Chennai service area was merged (September 2005) with Tamil Nadu service area making the number of service areas as 22 .

In addition to the LF, licensees offering mobile (wireless) services are required to pay Spectrum Usage Charges (SUC). The rates of SUC are linked to the frequency band and quantity of Radio Frequency Spectrum allotted to the operator. Till 2010, DoT followed an administrative allocation of radio frequency wherein

- Start-up spectrum of 2 x 4.4 MHz and 2 x 2.5 MHz were given to service providers intending to provide GSM services and CDMA services respectively and
- Additional allotment beyond the start-up spectrum was linked to subscribers' base.

But the process of administrative allocation was done away with in compliance with the directions of the Hon'ble Supreme Court of February 2012 and DoT introduced a system of auction of spectrum which among other things aimed at obtaining a market determined price for the natural resource through a transparent process.

SUC rates for subscriber access spectrum was revised upward in February 2010 effective from 1 April 2010 as shown below:

Table-1.2

Quantity of spectrum		**Spectrum charges as percentage of AGR[2]**
GSM (including 3G)	**CDMA**	
Up to 2 x 4.4 MHz	Up to 2 x 5.0 MHz	3
Up to 2 x 6.2 MHz	Up to 2 x 6.25 MHz	4
Up to 2 x 8.2 MHz	Up to 2 x 7.5 MHz	5
Up to 2 x 10.2 MHz	Up to 2 x 10.0 MHz	6
Up to 2 x 12.2 MHz	Up to 2 x 12.5 MHz	7
Up to 2 x 15.2 MHz	Up to 2 x 15.0 MHz	8

However this rate was challenged by Telecom Service Providers (TSPs) on the ground that DoT had unilaterally increased the rates which was not in public interest. The matter is sub-judice in Hon'ble Supreme Court.

This revised rate was applicable to the TSPs who acquired 3G spectrum in auction. For spectrum acquired through auction during February 2014 in the bands 1800 MHz and 900 MHz, SUC was to be charged at 5 per cent of the AGR. In cases of combination of existing spectrum in 900 MHz and 1800 MHz bands and spectrum acquired through the auction, the weighted average rate was to be adopted. For BWA spectrum in the bands 2300 MHz acquired through auction in 2010, SUC was to be charged at 1 per cent of the AGR.

In addition to the main spectrum, Microwave Access and Microwave Backbone spectrum[3] is also allotted to Cellular operators. Rate of SUC for Microwave Access and Microwave

[2] SUC was not paid uniformly by all operators but SUC on spectrum acquired through auction process was being paid as per DoT orders.

[3] Microwave transmission refers to the technology of transmitting information using radio waves. Microwave technology is widely deployed in mobile communications to provide point-to-point (PTP) Radio Frequency (R.F.) links in mobile backhaul as well as in the backbone network. Mobile backhaul is that portion of the network infrastructure that provides interconnectivity between the access and core networks. The backbone network is used to interconnect different nodes situated at different geographical locations.

Backbone was revised by DoT with effect from 3 November 2006. The revision has been challenged by GSM operators) on the ground that DoT had unilaterally increased the rates which was not in public interest. The matter is sub-judice.

1.2 Definition of Gross Revenue (GR)/Adjusted Gross Revenue (AGR) in the various licenses

The Licence Agreement signed between the Department of Telecommunication (DoT) and telecom service providers regulates the terms and conditions for provision of telecommunications service. As per the conditions of licence agreement, licensee companies were required to pay an annual licence fee to the DoT at an agreed percentage of the Adjusted Gross Revenue (AGR) reported for a licenced service. Definition of Gross Revenue (GR), Deductions and Adjusted Gross Revenue (AGR) in the various licenses issued by DoT are as follows-

a) **Unified Access Service License (UASL) and Unified License (UL) -** GR and permissible deductions to arrive at AGR was defined under clause 19 of the UASL Agreements. In terms of clause 19.1, the GR shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.

   Further, to arrive at AGR, following shall be excluded from the GR as mentioned in clause 19.2 of the agreement-

   i. Public Switched Telecom Network (PSTN) related call charges (Access charges) actually paid to other eligible/entitled telecom service providers within India;
   ii. Roaming revenues actually passed on to other eligible/entitled telecom service providers, and
   iii. Service Tax on provision of service and Sales Tax actually paid to the Government, if Gross Revenue had included Service Tax and Sales Tax.

b) **National Long Distance (NLD)-** The GR/AGR for NLD services was defined under clause 31 of Annexure II of the NLD Agreement which provides that "Revenue for the purpose of levying License Fee as a percentage of revenue shall mean the Gross total revenue income accruing to the licensee by way of providing NLD service under the license including the revenue on account of supplementary/value added services and leasing of infrastructure, interest, dividend etc. as reduced by the component part of a pass through nature payable to other service providers to whose network licensee's NLD network is interconnect, for carriage of calls.

c) **International Long Distance**- For ILD services GR, as defined under clause 36 of definition and interpretation forming part of ILD Agreement, was "all revenue accruing to the licensee on account of goods supplied, services provided, leasing of infrastructure, use of its resources by others, application fee, installation charges, call charges, late fees, sale proceeds of instruments (or any terminal equipment including accessories), handsets, bandwidth, income from value added service, supplementary services, access or interconnection charges, any lease or rent charges for hiring of infrastructure etc, and any other miscellaneous items including interest, dividend etc., without any set-off for related item of expense, etc.

AGR for the purpose of levying LF would mean the GR as reduced by:

i. Call charges (Access charges) actually paid to other telecom service providers for carriage of calls.

ii. Service tax for provision of service and sales tax actually paid to the Government, if Gross Revenue had included the component of service tax and sales tax.

d) **Internet Services-** GR for Internet Services including Internet Telephony (ISP-IT) was defined in the licence agreement as "GR shall be inclusive of Internet Access service, Internet Content service, Internet Telephony service, installation charges, late fees, sale proceeds of terminal equipment, revenue on account of interest, dividend, value added services, supplementary services, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.

For the purpose of arriving AGR, the following shall be excluded from the GR-

(i) Charges from Internet access, Internet content and Internet access related installation charges.

(ii) Service tax for provision of service and sales tax actually paid to the Government, if GR had included the component of service tax and sales tax.

e) **Very Small Aperture Terminal (VSAT)-** In terms of the definition of GR specified in the VSAT License agreement, "The Gross Revenue shall include all revenues accruing to the LICENSEE on account of goods supplied, services provided, leasing/hiring of infrastructure, use of its resources by others, application fees, installation charges, call charges, late fees, sale proceeds of instruments (or any terminal equipment including accessories), VSAT hardware/software, fees on account of Annual Maintenance Contract/ Annual Comprehensive Maintenance Contract, income from value added services, supplementary services, access or interconnection charges, etc. and any other miscellaneous item including interest, dividend, etc. without any set-off of related item of expense etc."

Revenue for the purpose of levying licence fee as a percentage of revenue shall include the gross total revenue accruing to the licensee by way of providing VSAT service under this licence but excluding:

(i) Charges of pass through nature actually paid to other Telecom service provider to whose network, the licensee's network is interconnected for carriage of data.

(ii) Service tax paid to the Government, if gross revenue had included the component of service tax.

1.3 Important specifications for reporting revenue for payment of license fee

The licence agreement between DoT and the service providers stipulated the norms for the preparation and reporting of the accounts by the licensee companies and the method of payment of license fee to government. As per the stipulations revenue and license fee payable by the licensee company, computed in accordance with the licence conditions, are required to be audited by its Auditors appointed under Section 224 of the Companies Act, 1956 (Section 139 of the Companies Act, 2013 applicable with effect from 1 April 2014) and should contain a report from the Statutory Auditor of the Company to the effect that Statements have been prepared in accordance with the norms/guidelines contained in the Licence Agreement. These norms were important requirements built into the agreement to ensure that the licensee companies report their income in accordance with the licence conditions and nonconformities, if any, were disclosed fully.

Important requirements in the preparation of accounts and payment of license fee are:

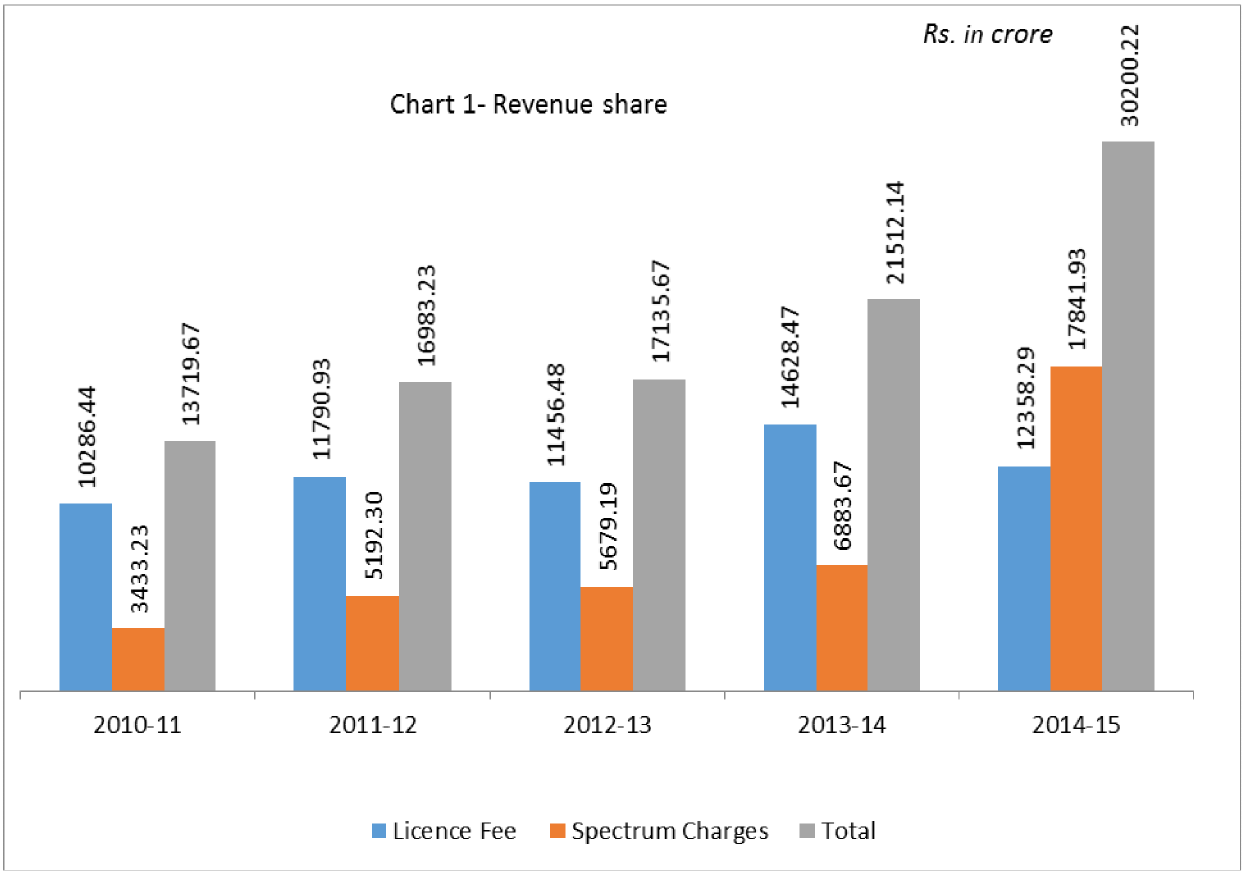
Table - 1.3

Stipulations
➢ Accounts should be maintained separately for each telecom service operated by the licensee company
➢ Computation of revenue and License fee payable should be shown in a prescribed Statement (AGR Statement) and should be audited by the Auditors of the Licensee appointed under Section 224/139 of the Companies' Act, 1956/2013.
➢ While calculating AGR for limited purpose of levying Spectrum Usage Charges based on revenue share, revenue from Wireline Subscribers shall not be taken into account.
➢ Final adjustment of the License fee for the year shall be made based on the GR figures duly certified by the Auditors in accordance with the provisions of the Companies' Act 1956/2013.
➢ Service revenue (amount billable) should be shown gross and details of discount/rebate indicated separately ➢ Service Tax and Sales Tax billed, collected and remitted to the Government shall be shown separately ➢ Sales to be shown gross and details of discount/rebate allowed and of sales returns be shown separately ➢ Income from interest and dividend to be shown separately, without any related expenses being set-off against them ➢ Item-wise details of income that has been set off against corresponding expenditure ➢ Roaming charges should indicate operator-wise receivables and payables, roaming commission received and paid and any other variable charges collected/passed on to other operators

➢ A reconciliation between the figures appearing in the quarterly statements with those appearing in annual accounts to be submitted along with a copy of the published annual accounts audit report and duly audited quarterly statements
➢ The licensor may, on forming an opinion that the statements or accounts submitted are inaccurate or misleading, order audit of the accounts of the licensee by appointing auditor, at the cost of the licensee and such auditor(s) shall have the same powers which the statutory auditors of the company enjoy under Section 227/143 of the Companies Act, 1956/2013. The licensor may also get conducted a 'Special Audit' of the licensee company's accounts/records
➢ LF shall be payable in four quarterly instalments during each financial year. This Fee shall be paid on the basis of actual revenue (on accrual basis)
➢ Any delay in payment of LF payable, beyond the stipulated period will attract interest at a rate which will be 2 *per cent* above the Prime Lending Rate (PLR) of State Bank of India existing as on the beginning of the Financial Year.
➢ The interest would be compounded monthly and a part of the month would be reckoned as a full month for the purposes of calculation of interest. A month shall be reckoned as an English calendar month.

1.4 Revenue share collected

Details of revenue share collected by DoT during the years 2010-11 to 2014-15 are given below:



1.5. Arrangements in DoT for collection, accounting and assessment of LF and SUC

DoT has put in place the following arrangements for collection of revenue share paid by telecom service providers.

Table- 1.4

Process	Office involved
➢ Collection of license fee and spectrum charges	Office of the Controller of Communication Accounts (CCA) at LSAs
➢ Verification of proof documents submitted by PSPs for claiming deductions from GR to arrive at AGR	CCA offices
➢ Assessment of revenue share based on the annual audited accounts of the operator and the verification reports submitted by CCAs and issue of demand notes	License Finance Wing of DoT
➢ Assessment of SUC	WPF division of DoT/CCA offices

1.6 Scope of Audit

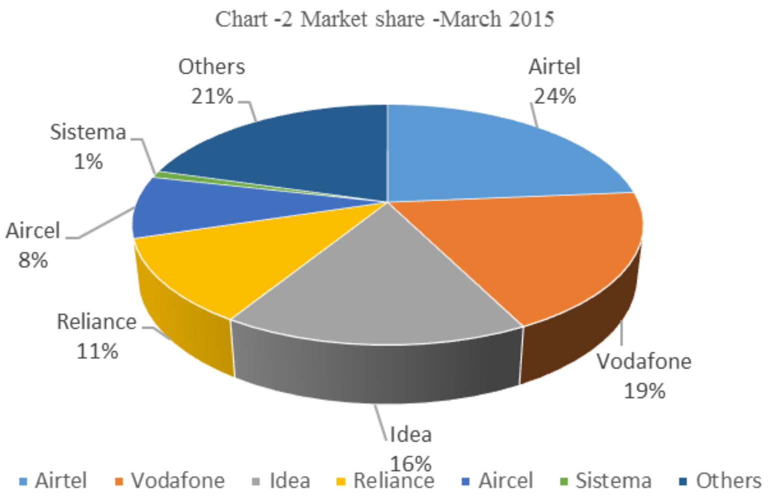
Comptroller and Auditor General of India had taken up verification of the basic accounting records and documents of six[4] telecom service providers in 2014-15 covering the accounts of four years from 2006-07 to 2009-10 as mandated under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 and Rule 5 (ii) of Telecom Regulatory Authority of India, Service Providers (Maintenance of Books of Accounts and other Documents) Rules, 2002 as upheld by Hon'ble Supreme Court of India's Judgement dated 17 April 2014. Audit findings featured in the Union Government (Communications and IT Sector) Report No. 4 of 2016 of the Comptroller and Auditor General of India.

Comptroller and Auditor General of India conducted verification of the basic accounting records and documents of five telecom service providers audited earlier (excluding M/s Tata Tele Services Limited and its associated company M/s Tata Teleservices (Maharashtra) Limited) in 2016 covering the accounts of four years from 2010-11 to 2014-15 and for the period from 2006-07 to 2014-15 in respect of M/s Sistema Shyam Teleservices Limited. The verification was in accordance with the mandate under section 16 of the Comptroller and Auditor General's (Duties, Powers & Conditions of Service) Act, 1971 and Rule 5 (ii) of Telecom Regulatory Authority of India, Service Providers (Maintenance of Books of Accounts and other Documents) Rules, 2002 as upheld by Hon'ble Supreme Court of India's Judgement dated 17 April 2014.

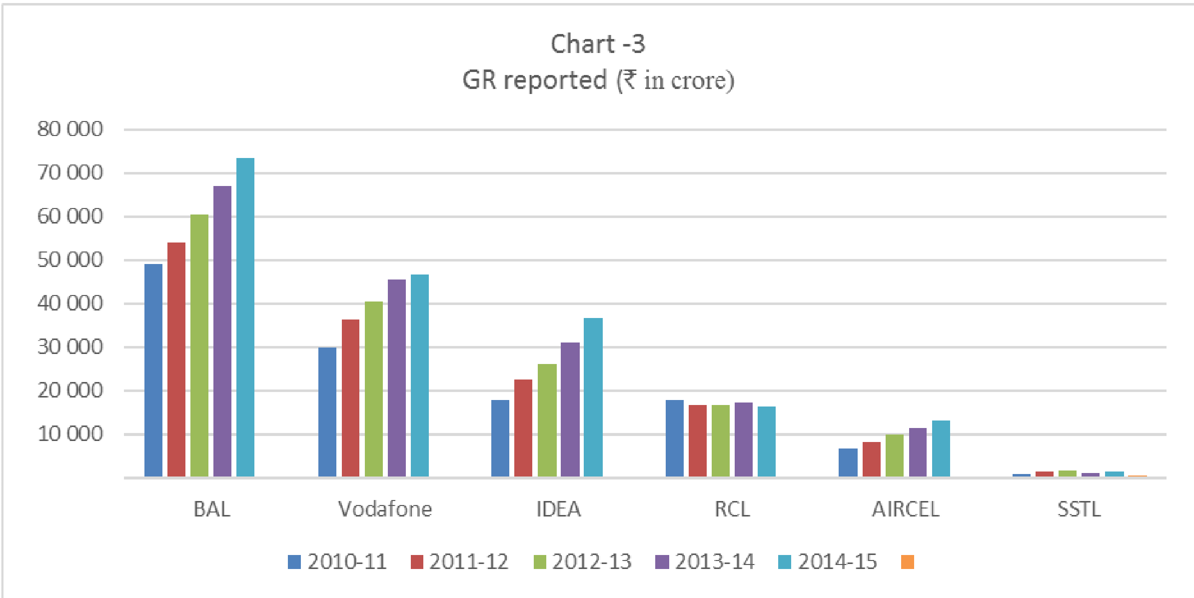
[4] M/s Bharti Airtel Limited and its subsidiary Bharti Hexacom Limited, M/s Vodafone India Limited and its subsidiaries, M/s Reliance Communications Limited and its subsidiary M/s Reliance Telecom Limited, M/s Idea Cellular Limited and its subsidiary Aditya Birla Telecom Limited, M/s Tata Tele Services Limited and its associated company M/s Tata Teleservices (Maharashtra) Limited and M/s Aircel Limited and its subsidiaries Aircel Cellular Limited and Dishnet Wireless Limited

This Report covers the accounts of all the above operators for years from 2010-11 to 2014-15 and in case of M/s Sistema Shyam Teleservices audit coverage was for the years from 2006-07 to 2014-15. The operators selected for this report account for nearly 80 *percent* of the telecom market in India.

The market share of the operators and the gross revenue reported by them are presented below:



Source: TRAI



Note: GR of SSTL is for all the nine years covered in audit.

1.7 Audit methodology

All the operators provided access to General Ledger (GL) Enquiry Module of their financial system (Oracle Financial or SAP) to audit. Audit scrutinized the account codes which had a bearing on the GR on test check basis and the compliance by the operators to the norms prescribed by DoT for preparation of their accounts for reporting GR. The licensee also provided reconciliations between AGR statements and Service Revenue, Other income and Finance income of Profit & Loss Accounts duly mapped with Trial Balances (TBs). Additional data, information and clarifications, if required, were obtained through issue of Audit queries and discussion with the respective operators.

Exit meetings were held with all the operators where the preliminary audit findings/ observations were discussed in detail. Operator wise draft audit reports were issued to DoT with a advance copy to the operators concerned to elicit their views/responses to the audit observations. This Report has been prepared taking into account the responses/replies received from the operators and the Ministry.

1.8 Audit criteria

Important criteria used in audit are:

- Provisions of Licence agreements as amended from time to time
- Various instructions issued by DoT on collection of licence fee and spectrum usage charges

1.9 Acknowledgement

We place our sincere appreciation for the cooperation extended by the Management of all the six telecom service providers and the Department of Telecommunications in facilitating the audit.