

**GOVERNMENT OF INDIA  
MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY  
DEPARTMENT OF TELECOMMUNICATIONS**

**RAJYA SABHA  
STARRED QUESTION NO. 65  
TO BE ANSWERED ON 25<sup>TH</sup> FEBRUARY, 2011**

**GRANT OF UASL**

**\*65 SHRI RAJEEV CHANDRASEKHAR:**

Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

- (a) whether it is a fact that two letters were written by Telecom Regulatory Authority of India (TRAI) to the Department of Telecommunications (DoT) dated 14 November, 2003 and 19 November, 2003 with regard to the grant of Unified Access Service Licenses (UASL);
- (b) if so, the details of these letters and what action was taken pursuant to these letters; and
- (c) whether such letters regarding TRAI recommendations and guidelines can be written and be held legally valid and acted upon, if written after the issuance of UASL guidelines on 11 November, 2003, given that TRAI's role is limited to making recommendations?

**ANSWER**

**THE MINISTER OF HUMAN RESOURCES DEVELOPMENT AND COMMUNICATIONS  
AND INFORMATION TECHNOLOGY  
(SHRI KAPIL SIBAL)**

- (a) to (c)      A Statement is laid on the Table of the House.

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**STATEMENT TO BE LAID ON THE TABLE OF THE RAJYA SABHA IN RESPECT OF PARTS (a) TO (c) OF THE RAJYA SABHA STARRED QUESTION NO. 65 FOR 25<sup>TH</sup> FEBRUARY, 2011 REGARDING "GRANT OF UASL".**

(a) to (c) Sir, with regard to the grant of Unified Access Service (UAS) Licenses, two letters dated 14 November, 2003 and 19 November, 2003 were written by Telecom Regulatory Authority of India (TRAI) to the Department of Telecommunications (DoT). Copy of both the letters are enclosed at **Annexure-I** and **Annexure-II**. The said letter dated 14.11.2003 of TRAI were taken into consideration by the Government while approving the Letters of Intent (LoIs) on 24.11.2003 which inter-alia, indicated the amount of requisite entry fee for grant of new UAS licences.

TRAI has informed that no file number has been mentioned on the letter dated 14.11.2003 and it seems that this letter was written directly by the then Chairman, TRAI, as no records have been found. However, a copy of the letter was enclosed with TRAI's letter no. 101-35/2003-MN dated 19<sup>th</sup> November 2003. In addition, the Authority in its meeting held on 24<sup>th</sup> November 2003 and continued on 3<sup>rd</sup> December 2003 took note of the decisions taken during informal meetings or on files and approved them.

The Report of Comptroller & Auditor General of India (CAG) on "Issue of Licences and Allocation of 2G Spectrum by the Department of Telecommunications" which was laid on the Table of the House on 16.11.2010 and the report dated 31.01.2011 of the One Man Committee (OMC) under Justice (Retd) Shivraj V Patil have observed that the procedure adopted to grant new UAS licences at the entry fee of price determined for the 4<sup>th</sup> CMTS licence in 2001 was not in line with the TRAI's recommendations dated 27.10.2003/ Cabinet Decision dated 31.10.2003. The relevant extract of the Report of CAG and the Report of the OMC are enclosed at **Annexure-III**.

Contd...3/-



PRADIP BAIJAL

Chairman

TELECOM REGULATORY AUTHORITY OF INDIA



ANNEXURE I

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November 14, 2003.

My dear Vinod,

Kindly refer our telecon regarding Entry Fee of the new Unified Licensee.

2. In this regard I am reproducing para 7.18, 7.19 and 7.20 of our recommendations :-

7.18 The 3<sup>rd</sup> alternative is that the existing entry fee of the fourth Cellular Operator would be the entry fee in the new Unified Access Licensing Regime. BSOs would pay the difference of the fourth CMSP's existing entry fee and the entry fee paid by them. It may be recalled that, even in the past, entry to cellular and basic services has been on fixed fee basis, e.g. for metros in the case of cellular and the second BSO.

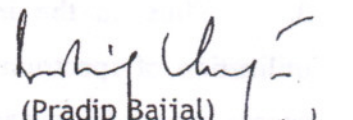
7.19 It is recommended that the 3<sup>rd</sup> alternative as mentioned in para 7.18 above may be accepted for fixing the entry fee for migration to Unified Access Licensing regime for Basic Cellular services at the circle level.

7.20 In service areas where there is no fourth operator - viz. Bihar, Orissa, W.B. & A.N. and Assam, etc. - no extra entry fee would be charged from the existing operators migrating to the Unified Access Licensing Regime, since in these areas operators did not see a potential mobile market at the time of repeated bidding for the 4<sup>th</sup> cellular operator.

It would be clear from the above that the entry fee of the new Unified Licensee would be the entry fee of the 4<sup>th</sup> cellular operator and in service areas where there is no 4<sup>th</sup> operator - the entry fee of the existing BSO fixed by the Government (based on TRAI's recommendations). Incidentally, in such States where no 4<sup>th</sup> cellular operator came in, the entry fee for BSOs was fixed by the Government and as per our recommendations in para 7.20 above, it will be the same for new or existing unified licensee.

With regards,

Yours sincerely,

  
(Pradip Baijal) 14/11

530-G/MIP/03

19/11 Shri Vinod Vaish,  
Secretary,  
Department of Telecommunications,  
Sanchar Bhavan,  
New Delhi-110 001.

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-4- ANNEXURE-II

भारतीय दूरसंचार विनियामक प्राधिकरण

ए-2/14, सफदरजंग इन्क्लेव, नई दिल्ली-110029

ई-मेल : trai07@bol.net.in फोन : 26167448 फैक्स : 91-11-26103294

TELECOM REGULATORY AUTHORITY OF INDIA

A-2/14, SAFDARJUNG ENCLAVE, NEW DELHI-110029

E-mail : trai07@bol.net.in Phone : 26167448 Fax : 91-11-26103294

HARSHA VARDHANA SINGH  
SECRETARY-CUM-PRINCIPAL ADVISOR

D. O No. 101-35/2003-MN

Date: November 19, 2003

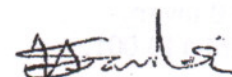
Sub : Recommendation of the TRAI on Issues relating to Spectrum.

Dear Shri Gupta,

Please refer to TRAI's recommendations dated 27.10.2003, Para 7.30 of these recommendation states that efficient utilisation of spectrum by all service providers is of utmost concern to the Regulator. TRAI has further mentioned that it will shortly provide its recommendations on efficient utilization of spectrum, spectrum pricing, availability and spectrum allocation procedures. DOT vide their letter No.848-439/2003-VAS /5 dated 17.11.2003 has asked TRAI to submit its opinion on spectrum related issues at the earliest.

2. In para 7.31 of TRAI recommendations, it was mentioned that while operators may be issued unified access license they should continue to provide wireless services in the already allocated/contracted spectrum and no additional spectrum would be allocated only because of migration. It has been further recommended that there shall be no change in the spectrum allocation procedure as part of migration process. Thus the principle is that the prevailing spectrum allocation procedures should continue till fresh Guidelines on this matter are issued by the DOT. This principle can be applied in the interim period for the new entrants also.

3. Thus, in the interim period before the TRAI recommendations on efficient utilization of spectrum etc become available, if the licensor has to issue any unified access license to new applicants, the TRAI feels that spectrum to these licensees may be given as per the existing terms and conditions relating to spectrum in the respective license agreement. This implies that even though unified access license is service and



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Rajender Singh

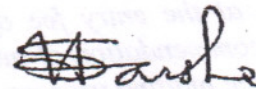
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technology neutral, spectrum under the new unified license for offering mobile services may be allocated in the interim period on the technology used for offering these services. For example, if a new Unified Access provider is offering wireless mobile service using GSM technology then the allocation/contracted spectrum in existing cellular mobile license may be provided and for those using CDMA technology, spectrum allocation as per the provisions of basic service operators license can be considered.

4. Regarding entry fee to new Unified Access licensees, the matter has already been clarified vide Chairman TRAI's D.O. letter dated 14<sup>th</sup> November 2003 (copy enclosed).

5. This is issued with approval of Authority.



(Harsha Vardhana Singh)  
Secretary-cum- Principal Advisor

Shri J. R. Gupta  
Sr. DDG (VAS)  
DOT  
Sanchar Bhawan  
New Delhi.

Contd... 6/-



- I. **Observation of CAG:** In the matter, the Report of Comptroller & Auditor General of India (CAG) on "Issue of Licences and Allocation of 2G Spectrum by the Department of Telecommunications" which was laid on the Table of the House on 16.11.2010, has inter-alia, observed the following:

"3.1.3 .....In pursuance to the Cabinet's approval, the DoT issued the guidelines on UAS Licencing (11 November 2003), for moving towards UASL regime by giving the option to all existing BSOs and CMSPs to migrate to UASL regime. The guidelines also included a condition that "All applications for new Access Services Licence shall be in the category of Unified Access Services Licence." There was ambiguity regarding entry fee to be charged from the new licensees as TRAI had not given any recommendation regarding introduction of new operators in the first phase of UASL regime. Secretary, DoT, spoke to the Chairman, TRAI who clarified (14 November 2003) that entry fee of the new unified licensee would be the entry fee of 4<sup>th</sup> Cellular Operator and in service areas where there is no fourth operator, the entry fee of existing BSO fixed by the Government (based on TRAI recommendations). DoT decided to receive all applications under UAS without revision of the spectrum allocation procedures/revision of entry fee, which automatically lifted the restriction on the number of operators in the UAS regime."

"3.1.7 The DoT's action of applying the rates approved for the existing operators for migrating to UAS regime, to new applicants also by relying on the clarification of the Chairman TRAI in his individual capacity was inconsistent with the recommendations of the TRAI (2003) and went beyond the authority given by the Cabinet. It also violated all canons of financial propriety. The DoT had to resort to informal clarifications from TRAI before concluding that new applications would also be at the entry fee of price determined for 4th CMSP in 2001 as against TRAI's recommendation of introducing new operators in the existing regime through a multi-stage bidding process. Elimination of bidding process without delinking licensing from spectrum was not intended by TRAI."

- II. **Observation of the One Man Committee (OMC):** In the matter the OMC in its report dated 31.01.2011 has inter-alia, opined the following:

**Para 6.1(ii)** "Though the recommendations of TRAI dated 27.10.2003 for unified licensing regime in para 7.39 contained express recommendation that introduction of additional players in UASL regime had to be through a multistage bidding process, Mr. Vinod Vaish, the then Secretary, DoT, appears to have sought opinion of the Chairman, TRAI on some aspect through a telephonic talk instead of making proper reference in writing as required under second proviso to section 11 (1) of TRAI Act as has been the practice. The Chairman, TRAI wrote a letter dated 14.11.2003, which was sought to be interpreted to infer conclusion as regards entry fee payable by fresh UASL contrary to and inconsistent with the express recommendations of TRAI. Based on such interpretation on 24.11.2003 a procedure was formulated to apply the entry fee paid by 4th Cellular operators (discovered in 2001) to new entrants under UASL regime in 2003 and also to consider applications for grant of UASL on FCFS basis. Formulation of procedure thus, was contrary to the decision of Union Cabinet dated 31.10.2003 which approved recommendations of TRAI dated 27.10.2003; before formulating such procedure recommendations from TRAI were not obtained; and the matter was not placed before the Telecom Commission. The decision to apply entry fee discovered in 2001 for the new entrants without revision was also opposed to the policy requirement of the price of spectrum being commensurate with opportunity cost....."

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