

MINISTRY OF LAW & JUSTICE

(Department of Legal Affairs)

The matter relates to the grant of new Unified Access Service (UAS) Licences and approval for use of Dual Technology Spectrum by UAS licencees.

The Ministry of Communications & Information Technology (Department of Telecommunications) have outlined 4 alternatives to deal with the 575 applicants for the grant of UAS and allotment of spectrum to various categories of spectrum. In that connection the Administrative Ministry have sought the views of the Ld Attorney General /Solicitor General on the different alternatives.

The questions posed for the opinion of Attorney General/Solicitor General appear to be too broad and the issue of disposal of the applications for UAS appears to be mixed up with the allotment of Spectrum. Before the request for seeking the views of the Ld Attorney General /Solicitor General the issues will have to be refined further.

MLJ may see for directions.

T.K.Viswanathan

Law Secretary

1/11/07

MLJ

MLJ

I agree -
In view of the importance of the case and various options indicated in the statement of the case it is necessary that the whole issue is first considered by an empowered group of Ministers & in that process legal opinion of AG can be obtained.

1.11.07

Law Secy

MLJ's minutes above may be seen.

A. Kishor Reddy

Off. J. S. (P. R. DEPT. STRA)
Dy. Secy. 1046/07
Date 01/11/07



श्री. श्रीगणेशाय
ए. राजा
A. RAJA

मंत्री
संचार एवं सूचना प्रौद्योगिकी
भारत सरकार,
इलेक्ट्रॉनिक्स निकेतन, 6, सी.जी.ओ. कॉम्प्लेक्स,
नई दिल्ली-110 003
MINISTER
COMMUNICATIONS & INFORMATION TECHNOLOGY,
GOVERNMENT OF INDIA,
ELECTRONICS NIKETAN, 6, C.G.O. COMPLEX,
NEW DELHI-110 003

D.O. No.20-100/2007-AS.1
Dated 2nd November 2007.

Respected Sir,

After the announcement of TRAI Recommendations on Review of Licence Terms and Conditions for (Telecom) Access Service Providers on 28th August, 2007, an unprecedented number of applications were being received by the Department due to Recommendation of TRAI recommending "No Cap" on number of Licences in a Service Area.

2. As unprecedented number of applications were being received, a cut-off date of 1st October, 2007 was announced by the Department on 24th September, 2007 and a Press Release was given. In all 575 applications for 22 Service Areas were received.

3. The Department wanted to examine the possibility of any other procedure in addition to the current procedure of allotment of Licences to process the huge number of applications. A few alternative procedures as debated in the Department and also opined by few legal experts were suggested by the Department of Telecom to Ministry of Law & Justice to examine its legal tenability to avoid future legal complications, if any. Ministry of Law and Justice, instead of examining the legal tenability of these alternative procedures, suggested referring the matter to empowered Group of Ministers. Since, generally new major policy decisions of a Department or inter-departmental issues are referred to GOM, and, needless to say that the present issue relates to procedures, the suggestion of Law Ministry is totally out of context.

4. Now, the Department has decided to continue with the existing policy (first-cum-first-served) for processing of applications received up to 25th September 2007, i. e. the date when the news-item on announcement of cut-off date appeared in the newspapers. The procedure for processing the remaining applications will be decided at a later date, if any spectrum is left available after processing the applications received up to 25th September 2007.

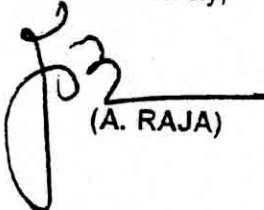
4. As the Department is not deviating from the existing procedure, I hope this will satisfy the Industry.

5. You will appreciate that I am writing this letter to apprise you about the latest developments in the Department.

I take this occasion to extend my warm Diwali Greetings.

With regards,

Yours sincerely,


(A. RAJA)

Dr. Manmohan Singh,
Prime Minister of India,
New Delhi.



सत्यमेव जयते

प्रधान मंत्री

Prime Minister

New Delhi
2 November, 2007

Dear Shri Raja,

A number of issues relating to allocation of spectrum have been raised by telecom sector companies as well as in sections of the media. Broadly, the issues relate to enhancement of subscriber linked spectrum allocation criteria, permission to CDMA service providers to also provide services on the GSM standard and be eligible for spectrum in the GSM service band, and the processing of a large number of applications received for fresh licenses against the backdrop of inadequate spectrum to cater to overall demand. Besides these, there are some other issues recommended by TRAI that require early decision. The key issues are summarized in the annexed note.

I would request you to give urgent consideration to the issues being raised with a view to ensuring fairness and transparency and let me know of the position before you take any further action in this regard.

With regards,

Yours sincerely,

Manmohan Singh
(Manmohan Singh)

Shri A. Raja
Minister of Communications and IT
New Delhi

Annexure

1. **Enhancement of subscriber linked spectrum allocation criteria**

In August 2007, the TRAI has recommended interim enhancement of subscriber linked spectrum allocation criteria. Service providers have objected to these recommendations, alleging errors in estimation / assumptions as well as due procedure not having been followed by the TRAI while arriving at the recommendations.

2. **Permission to CDMA service providers to also provide services on the GSM standard and be eligible for spectrum in the GSM service band**

Based on media reports, it is understood that the DoT has allowed 'cross technology' provision of services by CDMA service providers and three such companies have already paid the license fee. With the deposit of the fee, they would be eligible for GSM spectrum, for which old incumbent operators have been waiting since last several years. The Cellular Operators Association of India (COAI), being the association of GSM service providers, has represented against this. It is understood that the COAI has also approached the TDSAT against this.

3. **Processing of a large number of applications received for fresh licenses against the backdrop of inadequate spectrum to cater to overall demand**

The DoT has received a large number of applications for new licenses in various telecom circles. Since spectrum is very limited, even in the next several years all these licensees may never be able to get spectrum. The Telecom Policy that had been approved by the Union Cabinet in 1999 specifically stated that new licenses would be given subject to availability of spectrum.

4. **In order that spectrum use efficiency gets directly linked with correct pricing of spectrum, consider (i) introduction of a transparent methodology of auction, wherever legally and technically feasible, and (ii) revision of entry fee, which is currently benchmarked on old spectrum auction figures**

5. **Early decision on issues like rural telephony, infrastructure sharing, 3G, Broadband, Number Portability and Broadband Wireless Access, on which the TRAI has already given recommendations.**

शु. इरुगलु
ए. रलकल
A. RAJA

डुतुरी
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NEW DELHI-110 003

D.O. No. 20-100/2007-AS.I
2nd November, 2007.

Respected Sir,
Vanakkam.

Kindly refer to your letter dated 2.11.2007 regarding various issues related to Telecom sector. In this regard I have already written to you a letter earlier today (copy enclosed) clarifying the position on processing of large number of applications received for fresh licences. Before giving clarifications to the averments contained in the Annexure to your letter, I would like to inform you that there was, and is, no single deviation or departure in the rules and procedures contemplated, in all the decisions taken by my Ministry and as such full transparency is being maintained by my Ministry and I further assure you the same in future also.

Clarifications with respect to other issues are as follows:

1. **Enhancement of subscriber linked spectrum allocation criteria**

TRAI had recommended in August 2007, enhancement in subscriber linked criteria for allotment of additional spectrum to existing operators in order to increase spectrum efficiency which is scarce. Independent to this, Telecom Engineering Centre (TEC), which is the competent body to look into such matter, was asked to examine the spectrum efficiency issues scientifically. TEC submitted its recommendations on 26.10.2007, which was in principle accepted by me. It has been placed on the website of the Ministry and therefore, anybody much less COAI is at liberty to challenge the report of TEC with scientific basis. **However, the fact still remains that no such attempts have been honestly made by them.**

2. **Permission to CDMA service providers to also provide services on the GSM standard and be eligible for spectrum in the GSM service band**

This matter was referred to TRAI for its comments on use of dual technology. TRAI, after due deliberations on the issue, recommended use of dual technology, enabling existing Universal Access Service licensees (USAL) to provide services under both (GSM and CDMA) technologies. It was examined in the Ministry and was agreed to as they will be able to rollout the network fast which will ultimately benefit the customers because of increase in teledensity and also resulting lower tariff. **These operators will get spectrum only after the allotment of spectrum to the existing operators according to their eligibility and also licence holders awaiting for initial spectrum.**

3. **Processing of a large number of applications received for fresh licenses against the backdrop of inadequate spectrum to cater to overall demand**

The issue of auction of spectrum was considered by the TRAI and the Telecom Commission and was not recommended as the existing licence holders who are already having spectrum upto 10 MHz per Circle **have got it without any spectrum charge**. It will be unfair, discriminatory, arbitrary and capricious to auction the spectrum to new applicants as it will not give them level playing field.

I would like to bring it to your notice that DoT has earmarked totally 100 MHz in 900 MHz and 1800 MHz bands for 2G mobile services. Out of this, so far a maximum of about 35 to 40 MHz per Circle has been allotted to different operators and being used by them. The remaining 60 to 65 MHz, including spectrum likely to be vacated by Defence Services, is still available for 2G services.

Therefore, there is enough scope for allotment of spectrum to few new operators even after meeting the requirements of existing operators and licensees. An increase in number of operators will certainly bring real competition which will lead to better services

and increased teledensity at lower tariff. **Waiting for spectrum for long after getting licence is not unknown to the Industry and even at present Aircel, Vodafone, Idea and Dishnet are waiting for initial spectrum in some Circles since December 2006.**

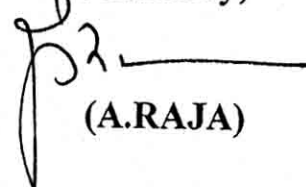
I would like to bring to your kind notice that M/s Aircel and M/s Spice Telecom, who were party to the petition to the TDSAT challenging DoT orders on acceptance of TRAI recommendations, have disassociated with the petition after having clarifications from me. These operators have openly admitted that the COAI had misled them, media and the public in general.

Since assuming charge, on more than three occasions I have reviewed all the long pending TRAI recommendations **announced during the tenures of my predecessors** including Number Portability, 3G, Wimax etc. and directed my officers to process them in a transparent manner. As a result we are almost reaching to shape the modalities to auction 3G and Wimax as contemplated by TRAI. I am told that divergence of views on implementation of Number Portability have been expressed by various stakeholders and I am trying to resolve it. The final decision on all these recommendations will be taken soon.

To conclude, I would like to assure you that all my decisions and endeavours are honestly aimed at development of the telecom sector, increasing the teledensity and lowering the tariff for the benefit of the public in general and customers in particular.

With regards,

Yours sincerely,



(A.RAJA)

Dr. Manmohan Singh
Hon'ble Prime Minister of India
7, Race Course Road
New Delhi.

शु. श्रीरामा
ए. राजा
A. RAJA

मंत्री
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D.O. No. 260/M(C&IT)/VIP/2007

26th December, 2007.

Respected Sir,
Vanakkam.

Kindly refer to my letters dated 2.11.2007, and subsequent personal discussions with you on various issues related to Telecom sector. As discussed with you I also had several discussions with the External Affairs Minister, who is also heading GOM on vacation of spectrum on these issues. The major issues viz., (i) Subscriber based criteria for additional spectrum to existing operators; (ii) issue of dual technology; and (iii) issue of new licences were discussed with External Affairs Minister at length. Since the cases filed by Cellular Operators Association of India (COAI) on these issues before Telecom Disputes Settlement & Appellate Tribunal (TDSAT) and Delhi High Court are being represented by Solicitor General of India, he was also called for the discussions to explain the legal position.

I must recall that there are three reports available with the DoT with regard to subscriber based criteria for additional spectrum to existing operators viz., Telecom Regulatory Authority of India (TRAI), Telecom Engineering Centre (TEC) and the Report of the Committee which was constituted under the chairmanship of Additional Secretary, DoT with two Professors from IIT, Kanpur and IIT, Chennai who have done their specialisation in Radio Frequency. For one or the other flimsy reason, COAI neither accepted any one of the report nor co-operated with the DOT to arrive at an amicable solution. Similarly, on use of Dual Technology also, they want to challenge the policy decision taken by the Government on the basis of TRAI recommendations.

Since TDSAT refused to grant stay they moved the Delhi High Court for stay on subscriber based criteria, dual technology and in addition to these, the issue of new licences. This clearly shows that the attitude of COAI is to maintain their monopoly in the sector by avoiding healthy competition and level playing field. The only malicious intention of COAI, it appears, is that they want to procrastinate the issues through frivolous and vexacious Court proceedings endlessly.

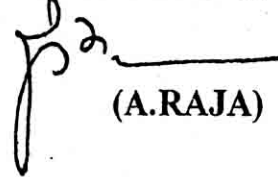
As I have already promised to you, my efforts in this sector are intended to give lower tariff to the consumer and to bring higher tele-density in the country, more specifically in rural areas. It is needless to say that the tariff in India is not as cheap as claimed in terms of purchasing power parity and standard of living of the people of the country since there is no tariff fixation.

In these circumstances, the discussions with the External Affairs Minister and Solicitor General of India have further enlightened me to take a pre-emptive and pro-active decision on these issues as per the guidelines and rules framed there under to avoid any further confusions and delay. The issue wise details and my decisions are given in the enclosed annexure.

This is for your kind information.

With regards,

Yours sincerely,



(A.RAJA)

Dr. Manmohan Singh
Hon'ble Prime Minister of India
New Delhi.

Encl: Annexure

1. Subscriber Linked Spectrum Allocation Criterion for CMTS/UAS Licensees

DOT provides Radio spectrum for providing mobile services to Wireless Operating Licence holders for roll out of GSM / CDMA services. An initial spectrum of 4.4 MHz for GSM and 2.5 MHz for CDMA based technology is provided to operators. Additional spectrum is provided to operators based on the number of subscribers, availability of spectrum, optimal use of spectrum, competition and other interest of public. To ensure optimal utilization of spectrum, TRAI while giving recommendation on other issues as requested by the DOT, also recommended that "there is a need to tighten the subscriber criteria for all the service areas so as to make it more efficient from the usage and pricing point of view. In order to frame new spectrum allocation criteria, a multi-disciplinary committee may be constituted. However, it is necessary to enhance the present subscriber norms as an ad-hoc measure so that the task of spectrum allocation is not stalled". This recommendation was accepted by the department on 17-10-2007.

However, COAI and existing GSM operators challenged recommendations of TRAI saying it lacks scientific basis. In the meantime, TEC which was simultaneously working on the subscriber based criteria for allocation of additional spectrum submitted its report to the Ministry which was accepted in-principal. Incidentally, TEC norms, which were based on scientific basis, came out to be stricter than TRAI norms. COAI challenged these reports in the TDSAT. To avoid any controversy and to find an amicable solution, as suggested by TRAI a Committee headed by Additional Secretary, DOT, including Representatives of COAI and AUSPI and two Professors from IIT Kanpur and IIT Chennai was setup. However, on 7-12-2007, COAI disassociated itself from the proceedings of the Committee. The committee has submitted its report and has suggested that another Committee as suggested by TRAI may be set up to look into broader issues of allotment of additional spectrum and till then recommended to go with TRAI's interim report for allotment of additional spectrum. This recommendation of the Committee is accepted.

In view of above, DOT is proceeding ahead to implement the recommendation of TRAI on subscriber based criteria as an interim measure and allot additional spectrum to eligible existing operators as per TRAI norm, followed by those who got licence in Dec 2006, dual technology and to new applicants as and when licences are given. An affidavit to this effect will be filed in both TDSAT and Delhi High Court.

2. Use of Dual Spectrum (Alternate technology) by UAS Licensees

DOT sought the recommendations of TRAI on Use of Dual Technology / Alternate Technology under USA License and other issues on 13-4-2007(prior to taking over by the present Minister). The recommendations of TRAI were received by DOT on 29-08-2007 which suggested that **"A licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternative technology or which would be paid by a new licensee going to use that technology"**. This recommendation was accepted by the department on 17-10-2007.

This policy makes existing UAS Licence holders (Reliance, TATA, Airtel, Vodafone, etc.) eligible for allotment of spectrum for alternate technology. COAI challenged Dual technology policy in the TDSAT. TDSAT has adjourned the case to 09-01-2008. Failing obtaining stay from TDSAT, COAI moved to Delhi high court on 20-12-2007. The matter was heard on 24-12-2007 and is posted for 3-1-2008 without granting any stay.

In view of above, DOT is proceeding ahead for allotting initial spectrum under dual technology policy to eligible applicants subject to the court order, if any. Application of TATA Telecommunication will also be processed as per the policy and guidelines. An affidavit to this effect will be filled in both TDSAT and Delhi High Court.

3. Issue of New Licences

Although UASL guidelines issued in December 2005 clearly indicates that **"Licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a service Area"**, DOT sought recommendation of TRAI on number of UAS licences to be issued in a Service Area on 13-4-2007(prior to taking over by the present Minister). The recommendations of TRAI were received by DOT on 29-08-2007 which suggested that **"No Cap be placed on the number of access service providers in any Service Area"**. This recommendation was accepted by the department on 17-10-2007 in order to encourage more competition in the Telecom Sector and decided to grant new UAS Licences. This is first time that December 2005 UASL guidelines are being implemented in letter and spirit in view of TRAI recommendation.

DOT has been implementing a policy of First-cum-First Served for grant of UAS licences. The same policy is proposed to be implemented in granting licence to existing applicants. However, it may be noted that grant of UAS licence and allotment of Radio Frequency is a three stage process.

1. **Issue of Letter of Intent (LOI):** DOT follows a policy of First-cum-First Served for granting LOI to the applicants for UAS licence, which means, an application received first will be processed first and if found eligible will be granted LOI.

2. **Issue of Licence:** The First-cum-First Served policy is also applicable for grant of licence on compliance of LOI conditions. Therefore, any applicant who complies with the conditions of LOI first will be granted UAS licence first. This issue never arose in the past as at one point of time only one application was processed and LOI was granted and enough time was given to him for compliance of conditions of LOI. However, since the Government has adopted a policy of "No Cap" on number of UAS Licence, a large number of LOI's are proposed to be issued simultaneously. In these circumstances, an applicant who fulfils the conditions of LOI first will be granted licence first, although several applicants will be issued LOI simultaneously. **The same has been concurred by the Solicitor General of India during the discussions.**

3. **Grant of Wireless Licence:** The First-cum-First Served policy is also applicable for grant of Wireless Licence to the UAS Licencee. Wireless Licence is an independent licence to UAS licence for allotment of Radio Frequency and authorising launching of GSM / CDMA based mobile services. There is a misconception that UAS licence authorises a person to launch mobile services automatically. UAS licence is a licence for providing both wire and wireless services. Therefore, any UAS licence holder wishes to offer mobile service has to obtain a separate Wireless Licence from DOT. It is clearly indicated in Clauses 43.1 and 43.2 of the UAS Licence agreement of the DOT.

Since the file for issue of LOI to all eligible applicants was approved by me on 2-11-2007, it is proposed to implement the decision without further delay and without any departure from existing guidelines.



सत्यमेव जयते

प्रधान मंत्री

Prime Minister

New Delhi

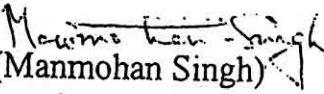
3 January, 2008

Dear Shri Raja,

I have received your letter of 26 December, 2007 regarding recent developments in the telecom sector.

With warm regards,

Yours sincerely,


(Manmohan Singh)

Shri A. Raja
Minister of Communications &
Information Technology
New Delhi