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No. 102-4/2011-MN

Dated 14<sup>th</sup> July 2011

The Secretary  
Department of Telecommunications,  
Sanchar Bhawan,  
20 Ashoka Road,  
New Delhi-110001

Sir,

**Sub: 'Reconsideration of views/recommendations of TRAI in respect of the rollout obligations of UAS Licensees'**

This has reference to the correspondence between TRAI and DoT, resting with DoT's letter No. 842-320/2005-AS-IV/(Vol. V)(Pt.)/1250 dated 15<sup>th</sup> June 2011 on TRAI's recommendations in respect of licenses (issued from December 2006 onwards) which are not in compliance of the rollout obligations. Under the 5<sup>th</sup> Proviso to Section 11(1) of TRAI Act, 1997, DoT has referred back the recommendations of TRAI dated 18<sup>th</sup> November, 2010 and 22<sup>nd</sup> December, 2010 for reconsideration of TRAI's views/recommendations.

2. The Authority has carefully examined the DoT's response on its recommendations. The Authority's recommendations, alongwith the detailed rationale, are given in the Note annexed to this letter. While this letter seeks to summarise the Authority's views, the details given in the Note may be referred to.
3. For the sake of convenience, the 145 licences that have been considered by both TRAI and DOT have been divided into four groups. The recommendations in respect of these categories are as follows;

A. **Group-I:** This comprises of 43 Licenses-38 licenses which were listed under 'C2' & 'D2' category in the letter of 18<sup>th</sup> November 2010 and 5 licenses which were recommended for cancellation, DOT has issued Show Cause Notices in 9 cases and is in the process of issuing Show Cause Notices in respect of 3 cases. Regarding the remaining 31 cases, the Authority is of the view that a complete reading of all the relevant provisions/definitions from the UAS License(as amended) clearly brings out that the licensees are not only required to register themselves with the TEC/TERM cells for meeting the coverage criterion but are also required to commission the Service, which means complete installation of all necessary equipment and offer of service to the subscribers so as to meet the stipulated performance roll out obligation. The Authority has obtained legal opinion from two eminent jurists (former judges of the Supreme Court of India) which support this view. The legal opinion given by the two eminent jurists is as follows:

**Jurist 1:**

*"Since the 10<sup>th</sup> February 2009 order is an "amending order", amending clauses 8.1, 34 and 35 of the licensee, it has to be read in conjunction with the terms of the licence and not as substituting the licence conditions".*

*"In my opinion, non-offering of the service to the subscribers amounts to failure to implement the roll out obligations and consequent violation of the licence conditions".*

*"The collocation of the words used along with the word "service" is strongly indicative, in my opinion, of the fact that all the other steps indicated in Clause 34.1 are very much integral parts of the service contemplated by Clause 34"*

*"Considering the definition given to the term in Annexure I, I am of the opinion that the word "service" itself requires "transmission and delivery of voice or non-voice messages over LICENSEES network in licensed service area". Obviously, mere registration with the*

*TEC/TERM cell does not amount to "Service" as defined in paragraph 55. Further, the definition of the expression "commissioning of service", in my opinion, leaves no doubt whatsoever that it means "complete installation of necessary equipments and offer of service to the subscribers", neither of which would be fulfilled by mere registration with TEC/TERM cell".*

*"In my opinion, the mere registration of the licensee with the TEC or TERM Cell does not by itself amount to rendering the services to the subscribers, nor would it amount to fulfilment of the licensee's roll out obligations under the license conditions".*

*"In my opinion, a licensee who has merely registered with the TERM cell but has not offered services to the subscribers within the stipulated period is liable to have his licence cancelled under clause 35.2 of the licence conditions".*

**Jurist 2:**

*"The non fulfilment of the roll out obligations, by reason of the licensee's failure to offer the necessary services to the subscribers, is a violation of the licence conditions".*

*"Mere registration with the TEC/TERM cell does not imply that the roll out obligations have been met. The registration is to be followed by a determination whether the roll out obligations, including offer of Service within specified time, have been met. If they have been met, then the date of registration with the TEC/TERM cell is to be treated as the date on which the roll out obligations have been met."*

*"A licence is liable to be cancelled in the case of a licensee who, though it is registered with the TEC/TERM cell, has not offered services to subscribers within the stipulated period, as required by clause 35.2 of the licence."*

**In view of the above, the Authority reiterates its earlier recommendation that the remaining 31 licenses under 'D2' category may also be cancelled as per the licence conditions, in addition to levy of liquidated Damages.**

B. **Group-II:** This comprises of 31 licenses which were listed under 'A2' and 'B2' categories with the recommendation that cancellation of licenses needs to be seriously considered in view of non-utilisation of spectrum and resultant loss of revenue to exchequer and that this may however require legal examination. Out of these 31 licenses, in the case of Aircel (Gujarat), TRAI, had categorised it under 'B2' category based on the date of registration with the TERM cell, as reported to TRAI by the licensee (a copy of which was sent to DOT vide our letter of 18<sup>th</sup> November 2010). However, it transpired that this date was different from that available with DOT. Based on DOT's records, DOT had issued a show cause notice for cancellation of the licence. In this context, the Authority agrees with the DOT.

In respect of balance 30 cases, DoT in its response mentioned that it had sought legal opinion and has accordingly imposed LD on this category of licensees. **The Authority reiterates its earlier recommendation that in respect of licenses listed under 'A2', and 'B2' categories, the DoT may seek legal opinion once again on the issue of cancellation of these licences.**

C. **Group-III:** These are 5 cases, which TRAI had listed under 'D1' Category - where the Service Providers had not complied with the roll out obligations, but the period of 52 weeks from the due date of compliance had not expired at the time when the recommendations were sent. As 52 weeks from date of allocation of spectrum have since expired, these cases now fall under the 'D2' category, because as per data available with TRAI, the licensees have not offered their services to the subscribers even after completion of 52 weeks from the due date of compliance of roll-out obligations. **The Authority recommends that four licenses given to M/s Videocon in Assam, J&K, Kolkata and North East may be cancelled as per licence conditions besides imposition of**

**Liquidated Damages. In respect of the 5<sup>th</sup> licence i.e. S-Tel in J&K Service area, the matter is *subjudice*, and as such the Authority does not consider it appropriate to make any recommendation in this case. DoT may examine this matter separately at the appropriate time and take action in accordance with law.**

D. **Group-IV:** This Group consists of the balance 66 licenses. Out of these 66 cases, in respect of 4 cases, where spectrum was not allotted, both TRAI and DoT are in agreement that no action is called for. Out of remaining 62 cases, there are 10 cases which were in the 'A1' category, 51 cases of B1 category and one case of C1 category. In respect of the 10 cases which were in the 'A1' category, DOT is in agreement in all cases except one case of Sistema Shyam in Kerala where it issued a show cause notice for cancellation. In respect of Aircel (Kolkata) too, which was in C1 category, DOT issued a show cause notice. The Authority agrees with the action of DOT in respect of these 6 cases.

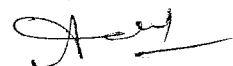
Of the balance 51 cases, DoT has imposed LD charges in respect of 45 cases, besides issue of show cause notice for cancellation of licence in respect of 3 cases based on the additional information available with them. In 6 cases, DOT determined that imposition of LD was not warranted on account of SACFA delay etc. **While agreeing with the DOT in respect of the 3 cases, in respect of the balance cases, the Authority would like to leave it to the DOT to calculate the amount of liquidated damages to be imposed, after duly taking into account all factors.**

4. Even without considering the Group-II cases, which require legal examination, the number of licences that are liable to be cancelled would be 53 in all, comprising of the 43 cases of Group-I above, 4 cases of Group-III and 6 cases of Group-IV above. If these licenses are cancelled,

spectrum of the order of 210.4 MHz, ranging from 4.4 MHz to 20.1 MHz in different Circles, will be released (Annexure-IV to the note). The resultant position regarding spectrum availability in different Circles is given in Annexure VA and Annexure -VB to the Note.

5. In this context, the Authority would like to invite the attention of DOT to Para 3.28 of the 11<sup>th</sup> May 2010 recommendations, relating to the 'prescribed limit' of spectrum to be allocated to the service providers in a service area as well as to Paras 8 and 9 of its recommendations dated 8<sup>th</sup> February 2011 relating to auction of surplus spectrum, which would now be available in certain Service areas consequent upon the cancellation of licenses as recommended.
6. In addition to the above, DoT, in its letter dated 6<sup>th</sup> May 2011, has referred to the issue of amendment of the dual technology license for contingent roll out obligations. DoT's view is that the 'in-principle approval letter(s) and amendment(s) to CMTS/UASL licenses contain provision for roll-out obligations'. As such, in the opinion of DoT, there is no need for any further amendment to the UAS license. For reasons explained in the accompanying Note, **TRAI reiterates that the CMTS/UAS license needs to be amended for incorporating contingent roll-out obligation for the dual technology spectrum holders.**
7. In keeping with practice, a copy of this letter along with enclosures is being placed on TRAI's website [www.trai.gov.in](http://www.trai.gov.in).
8. This letter is issued with the approval of the Authority.

Yours faithfully,



(R.K. Arnold)  
Secretary

***Annexure to TRAI letter No. 102-4/2011-MN Dated 14<sup>th</sup> July 2011***

**Note on Reference from DoT on Roll-out Obligation**

Under the 5<sup>th</sup> Proviso to Section 11(1) of TRAI Act, 1997, DoT has referred back for reconsideration of TRAI, TRAI's recommendations of 18<sup>th</sup> November, 2010 and 22<sup>nd</sup> December, 2010 regarding action to be taken against licensees for non-compliance of roll out obligations.

2. In its letter dated 18<sup>th</sup> November 2010, TRAI reviewed the compliance of rollout obligation in respect of 130 licenses issued from December 2006 onwards and after categorising them as per their status recommended action thereon as follows,:

A. Licensees who have complied with the roll out obligations and -

1. Where the rollout of network (in terms of BTS/ subscribers) was satisfactory; There were 4 such cases and it was recommended that no action was warranted.
2. Where the rollout of network (in terms of BTS/ subscribers) was not satisfactory. This was 1 case and it was recommended that cancellation of license needs to be seriously considered in view of non-utilisation of spectrum and resultant loss of revenue to exchequer. This may however require legal examination;

B. Licensees who have complied with the roll out obligations but with delay up to 52 weeks and-

1. Where the rollout of network (in terms of BTS/ subscribers) was satisfactory; there were 48 such cases and Liquidated damages were recommended to be imposed as per licence conditions;
2. Where the rollout of network (in terms of BTS/ subscribers) was not satisfactory. There were 30 such cases and liquidated damages were recommended to be imposed as per licence conditions. It was also recommended that cancellation of licenses needs to be seriously considered in view of non-

utilisation of spectrum and resultant loss of revenue to exchequer. This may however require legal examination;

C. Licensees who have complied with the roll out obligations but with delay involving more than 52 weeks and -

1. Where the rollout of network (in terms of BTS/ subscribers) was satisfactory; This was only one case. It was recommended that liquidated damages may be imposed as per licence conditions. It was noted that strictly going by the licence conditions, the license had to be cancelled. But since the rollout was satisfactory, it may be examined whether the license can be continued to avoid inconvenience to public. This would require legal examination;
2. Where the rollout of network (in terms of BTS/ subscribers) was not satisfactory. These were 4 cases and it was recommended that the licenses may be cancelled as per licence conditions in addition to levy of liquidated damages.

D. Licensees who have not complied with the roll out obligations and-

1. Where the period of 52 weeks from the due date of compliance had not yet expired; There were 5 such case and it was recommended that liquidated damages may be imposed as per licence conditions. Since the expiry of 52 weeks is due to take place shortly, these cases were to be monitored closely.
2. Where the period of 52 weeks from the due date of compliance has expired or where service has not been started even though registration has been made with the TERM cell. These were 34 cases and it was recommended that the licenses may be cancelled as per licence conditions in addition to levy of liquidated damages.

In case of 3 licenses, where no spectrum was allotted, the Authority recommended no action.

3. Further, TRAI had also reviewed the status of roll-out obligations in respect of 15 licenses of M/s Idea/Spice, and recommended, vide its letter dated 22<sup>nd</sup> December 2010, cancellation of 5 of these licenses. For



the remaining 10 licenses, TRAI categorised 6 of the licences in Category A1 and 3 in B1 and recommended action similar to that of 18<sup>th</sup> November 2010. No action was recommended in case of one license (Delhi) as spectrum was not allotted.

4. A Statement showing the position in respect of the above 145 cases (130+15) is given at Annexure-I.
5. While referring back TRAI's recommendations for reconsideration, DoT contended that meeting the roll-out obligations is not linked with the number of subscribers in the network or the number of BTSs deployed, as the number of BTSs may vary according to the area to be covered in a selected DHQ/town. Further, DoT has informed that the legal opinion on the matter was that *"In connection with TRAI recommendations regarding network rollout in terms of BTS/Subscribers, it is in the case of DoT that there (is) no specific provision for minimum number of BTSs and subscribers in the network for assessment of rollout obligations. In that view of the matter the TRAI recommendations can be remanded back for re-consideration"*. Accordingly, DoT imposed Liquidated Damages (LD) as applicable and has issued show cause notices (SCN) for termination of licenses **only** in cases wherever delay in rollout was more than 52 weeks.

#### **TRAI's response**

6. In response to DoT's request for reconsideration, the Authority has carefully reconsidered the matter, as part of which, it also obtained legal opinion from two eminent jurists, who are former judges of the Supreme Court of India.
7. Based on this review, the 145 licences can be grouped into four Groups-- Group-I: 43 licenses; Group-II: 31 licenses; Group-III: 5 licenses; and Group-IV: 66 licenses. The Authority's recommendations in respect of each of the above Groups are made in the following paragraphs.

8. **Group-I:** This group comprises of 43 Licenses - 38 licenses that were listed under 'C2' & 'D2' category and 5 licenses that were recommended for cancellation vide TRAI's letters dated 18<sup>th</sup> November 2010 and 22<sup>nd</sup> December 2010 respectively.

In respect of above licenses, the action intimated by DoT is as below:-

| Category   | Number of cases as per TRAI | Issue of SCN for cancellation of licences by DoT | Balance   |
|--|-----------------------------|--|-----------|
| C2   | 4                           | 4  | Nil       |
| D2   | 34                          | 3  | 31        |
| Cases of Idea/Spice where Cancellation of licenses recommended on 22 <sup>nd</sup> December 2010 | 5                           | 5 (2 already issued and 3 under process)         | Nil       |
| <b>Total</b>   | <b>43</b>                   | <b>12</b>  | <b>31</b> |

As per the above table, there is no difference between the action recommended by TRAI and action initiated by DoT in respect of 12 out of 43 cases (subject to issue of SCN for cancellation in 3 cases of Idea/Spice). In the balance 31 cases (Details at Annexure-II), TRAI had explicitly recommended the cancellation of licences besides imposition of LD. These 31 cases were categorised as 'D2' by TRAI. As mentioned in Para 2 above, 'D2' category is where the period of 52 weeks from the due date of compliance has expired or where the service has not been started even though registration has been made with the TERM cell. DoT has not issued show cause notices(SCN) for cancellation of these licences, because as per DoT, 'the date of registration with TERM cell for roll out testing is treated as fulfilment of roll out obligation subject to the condition that on testing roll out is found meeting the criteria in the test schedule.' Further, DoT has mentioned that the roll-out obligation is not linked with the number of subscribers in the network or the number of BTSs deployed.

9. It may be recalled that in its recommendations of November 2010, the Authority had classified those licensees where service has not been started (even though registration has been made with the TERM cell) in the 'D2' category, along with those licenses where the period of 52 weeks from the due date of compliance has expired. In this context, the following clauses and definitions, from the UAS License agreements, which deal with the roll-out obligations are relevant:-

**“34. Roll-out Obligations:**

*34.1 LICENSEE shall be solely responsible for installation, networking and operation of necessary equipment and systems for provision of SERVICE, treatment of SUBSCRIBER complaints, issue of bills to its subscribers, collection of its component of revenue, attending to claims and damages arising out of his operations.*

**34.2(a) Applicable for Category “A”, “B” and “C” Service Area Licence(s)**

*LICENSEE shall ensure that*

*At least 10% of the District Headquarters (DHQs) will be covered in the first year and 50% of the District Headquarters will be covered within three years of effective date of Licence.*

- (i) The licensee shall also be permitted to cover any other town in a District in lieu of the District Headquarters.*
- (ii) Coverage of a DHQ/town would mean that at least 90% of the area bounded by the Municipal limits should get the required street as well as in-building coverage.*
- (iii) The District Headquarters shall be taken as on the effective date of Licence.*
- (iv) The choice of District Headquarters/towns to be covered and further expansion beyond 50% District Headquarters/towns shall lie with the Licensee depending on their business decision.*
- (v) There is no requirement of mandatory coverage of rural areas.”*

In the amendment to the UAS licence agreement dated 10<sup>th</sup> February 2009, the two clauses related to date for reckoning the period for completion of roll-out obligation are as below:

“(ii) The Licensee shall ensure that metro service are of Delhi, Mumbai, Kolkata and Chennai are covered within one year of date of allocation of start up spectrum.

(iii) In non metro service areas, the licensee shall ensure that in first phase of roll out obligations at least 10% of DHQs where start up spectrum has been allocated are covered within one year of such spectrum. The date of migration or date of allocation of frequency whichever is later shall be considered for computing a final date of roll out obligation.”

“34.2(b) **Applicable for Metro Service Area Licence(s)**

The LICENSEE shall be required to provide in 90% of the service area Street as well as in-building coverage within one year of the effective date.”

**35. Liquidated damages:**

“35.1 The time period for provision of the Service stipulated in this Licence shall be deemed as the essence of the contract and the **service must be brought into commission not later than such specified time period.** No extension in prescribed due date will be granted. **If the Service is brought into commission after the expiry of the due date of commissioning, without prior written concurrence of the licensor and is accepted, such commissioning will entail recovery of Liquidated Damages (LD) under this Condition.** Provided further that if the commissioning of service is effected within 15 calendar days of the expiry of the due commissioning date then the Licensor shall accept the services without levy of LD charges.

35.2 **In case the LICENSEE fails to bring the Service or any part thereof into commission** (i.e., fails to deliver the service or to meet the required coverage criteria/ network roll out obligations) within the period prescribed for the commissioning, the Licensor shall be entitled to recover LD charges @ Rs. 5 Lakh (Rupees: Five Lakhs) per week for first 13 weeks; @ Rs 10 lakhs for the next 13 weeks and thereafter @ Rs. 20 lakhs for 26 weeks subject to a maximum of Rs. 7.00 crores. Part of the week is to be considered as a full week for the purpose of calculating the LD charges. **For delay of more than 52 weeks the Licence may be terminated under the terms and conditions of the Licence agreement.** The week shall mean 7 Calendar days from (from midnight) Monday to Sunday; both days inclusive and any extra day shall be counted as full week for the purposes of recovery of liquidated damages.”

**7. Provision of Service.**

“7.1 The LICENSEE shall be responsible for, and is authorized to own, install, test and commission all the Applicable system for **providing the Unified Access Services** under this Licence agreement”.

## **8. Delivery of Service**

*“8.1 The LICENSEE shall **commission the Applicable Systems** within one year from the effective date of the Licence. The date of Test Certificate issued by the Authorized Testing Party of the Licensor as specified from time to time shall be reckoned as the date of commissioning the service for the purpose of calculating liquidated damages in terms of Condition 35 of the Licence Agreement. However, the LICENSEE may start providing service to customers at any time without the need of specific approval of the Licensor.”*

**(emphasis supplied)**

**Relevant definitions as given in Annexure I to the UAS licence agreement are as below:**

- **APPLICABLE SYSTEMS:** “APPLICABLE SYSTEMS” means all the necessary equipment, systems / sub-systems and components of the network engineered to meet relevant ITU standards, ITU-T, ITU-R recommendations, TEC specifications and International standardization bodies such as 3GPP/3GPP-2/ETSI/IETF/ANSI/EIA/TIA/IS **for provision of SERVICE** in accordance with operational, technical and quality requirements and other terms and conditions of the Licence Agreement..
- **“COMMISSIONING OF SERVICE”** means complete installation of all necessary equipment **and offer of service to the subscribers so as to meet the stipulated performance roll out obligations.**”
- **“SERVICE”** covers collection, carriage, transmission and **delivery of voice or non-voice messages over LICENSEE's network** in licensed service area and includes provision of all types of services except for those requiring a separate Licence.

**(emphasis supplied)**

10. A complete reading of all the above relevant provisions/definitions from the UAS licence clearly implies that the licensees are not only required to register themselves with the TEC/TERM cells for meeting the coverage criterion but are also required to commission the service, which means complete installation of all necessary equipment and offer of service to the subscribers so as to meet the stipulated roll out obligations. Further, the licensee should also make the system operational in terms of offer of its services to the subscribers which include provision of service,

treatment of subscriber complaints, issue of bills to its subscribers, collection of its component of revenue, attending to claims and damages arising out of its operations. In case the licensee fails to fulfil the above obligations within the prescribed period, its license is liable to be cancelled.

11. As per the TRAI's Telecommunications Tariff Order (TTO), 1999, read along with 21<sup>st</sup> amendment, it is obligatory for a service provider to file the tariff plans with TRAI for information and record within seven (7) days from the date of launch of said tariff. Further, as per 5<sup>th</sup> May 2005 order of TRAI, the service providers are required to submit Gross Revenue and Adjusted Gross Revenue (AGR) figures on quarterly basis to TRAI. It is noted that the 31 licensees referred to in Para 8 above (Group-I), in their monthly/quarterly reports submitted to TRAI, have not reported any subscriber number within two years of allocation of spectrum to them. Further, out of these 31 licensees, 29 licensees have neither filed any tariff plan nor reported any AGR figures from wireline/wireless services to TRAI within two years of allocation of spectrum to them. Though the remaining 2 licensees (M/s Loop Telecom for Assam and North East service areas) have filed the tariff plans with TRAI in August 2010, they have neither reported any subscriber numbers till December 2010 nor reported any AGR figures arising from wireline/wireless services. This clearly establishes the fact that these 31 licensees have neither operationalised their network nor have offered their services to the subscribers. They are, therefore, in violation of the license conditions pertaining to roll-out obligations. The status in respect of tariff filed with TRAI, Revenue reported to TRAI and number of subscribers reported after two years from date of allocation of spectrum is also incorporated in Annexure-II.
12. As mentioned in Para 6 above, TRAI has also sought legal opinion on the matter from two eminent jurists. For obtaining the legal opinion from them, TRAI raised the following three queries:

- i. *Whether non-offering the services to the subscribers, amounts to non fulfilment of roll out obligations and consequent violation of the licence conditions?*
- ii. *Whether mere registration with the TERM cell would amount to compliance/fulfilment of roll out obligations?*
- iii. *Whether a licence is not liable to be cancelled in case a licensee, has though registered with the TERM cell, but not offered services to the subscribers, within the stipulated period, as per clause 35.2 of the UAS licence?*

The legal opinion given by the two eminent jurists is as follows:

**Jurist 1:**

*“Since the 10<sup>th</sup> February 2009 order is an “amending order”, amending clauses 8.1, 34 and 35 of the licensee, it has to be read in conjunction with the terms of the licence and not as substituting the licence conditions”.*

*“In my opinion, non-offering of the service to the subscribers amounts to failure to implement the roll out obligations and consequent violation of the licence conditions”.*

*“The collocation of the words used along with the word “service” is strongly indicative, in my opinion, of the fact that all the other steps indicated in Clause 34.1 are very much integral parts of the service contemplated by Clause 34”*

*“Considering the definition given to the term in Annexure I, I am of the opinion that the word “service” itself requires “transmission and delivery of voice or non-voice messages over LICENSEES network in licensed service area”. Obviously, mere registration with the TEC/TERM cell does not amount to “Service” as defined in paragraph 55. Further, the definition of the expression “commissioning of service”, in my opinion, leaves no doubt whatsoever that it means “complete installation of necessary equipments and offer of service to the subscribers”, neither of which would be fulfilled by mere registration with TEC/TERM cell”.*

*“In my opinion, the mere registration of the licensee with the TEC or TERM Cell does not by itself amount to rendering the services to the*

*subscribers, nor would it amount to fulfillment of the licensee's roll out obligations under the license conditions".*

*"In my opinion, a licensee who has merely registered with the TERM cell but has not offered services to the subscribers within the stipulated period is liable to have his licence cancelled under clause 35.2 of the licence conditions".*

**Jurist 2:**

*"The non fulfilment of the roll out obligations, by reason of the licensee's failure to offer the necessary services to the subscribers, is a violation of the licence conditions".*

*"Mere registration with the TEC/TERM cell does not imply that the roll out obligations have been met. The registration is to be followed by a determination whether the roll out obligations, including offer of Service within specified time, have been met. If they have been met, then the date of registration with the TEC/TERM cell is to be treated as the date on which the roll out obligations have been met."*

*"A licence is liable to be cancelled in the case of a licensee who, though it is registered with the TEC/TERM cell, has not offered services to subscribers within the stipulated period, as required by clause 35.2 of the licence."*

Thus it is clear from the above, that the roll-out obligation includes offer of the services to the subscribers. The opinion of the two jurists therefore substantiates the recommendation of the Authority.

13. It may be noted that the very purpose of mandating the roll out obligation is to ensure that the spectrum given there-under is effectively utilised to provide service to the public. The position of these licensees is such that neither the spectrum assigned to them has been effectively utilised for common good nor have they given expected revenue to the exchequer. Not offering the services to the subscribers, amounts to non-fulfilment of roll-out obligation and consequently violation of the license conditions. Besides, it amounts to hoarding of valuable spectrum and defeats the very purpose of granting the UAS license.



14. **In view of the above, the Authority reiterates its earlier recommendation that the remaining 31 licenses under 'D2' category may also be cancelled as per the licence conditions, in addition to levy of liquidated Damages.**

15. **Group-II:** This Group comprises of 31 licenses listed under 'A2' and 'B2' categories with the recommendation that cancellation of licenses needs to be seriously considered in view of non-utilisation of spectrum and resultant loss of revenue to exchequer and that this may however require legal examination.

Out of these 31 licenses, in the case of Aircel (Gujarat), TRAI, had categorised it under 'B2' category based on the date of registration with the TERM cell, as reported to TRAI by the licensee(a copy of which was sent to DOT vide our letter of 18<sup>th</sup> November 2010). However, it transpired that this date was different from that available with DOT. Based on DOT's records, DOT had issued a show cause notice for cancellation of the licence. In this context, the Authority agrees with the DOT.

In respect of remaining 30 licences in this group, DoT in its response has mentioned that it had sought legal opinion and has accordingly imposed LD on these 30 licensees. It may be noted that, the fact, that these licensees are technically compliant with the roll out obligations has already been recognised by TRAI while making the recommendations in November 2010. At the same time, the number of subscribers/ BTS being very small, the very purpose of assigning spectrum to these licensees, either in terms of coverage (and therefore social utility) or contribution to Government exchequer (or economic value), has not been realised. It is for this reason that, in November 2010, the Authority had recommended that the option of cancelling these licences needs to be seriously considered by way of a legal examination.

16. **In view of the above, the Authority reiterates its earlier recommendation that in respect of 30 licenses listed under ‘A2’, and ‘B2’ categories, DoT may seek legal opinion on the issue of cancellation of these licences.**
17. Apart from the cancellation of licences recommended in Group-I above, Government needs to address itself immediately to the issue of modifying the licence conditions in respect of the roll out obligations. The Authority has, in May 2010, recommended to the Government that the licence conditions regarding roll out obligations need to be modified to ensure better area coverage including the rural areas. Besides, in order to cover cases such as those in Group-II above, the Authority in its recommendations of May 2010, observed as follows:

*“Presently, the rollout obligations for new licensees are applicable from the date of allocation of start up spectrum. However, it is noticed that some service providers do not commence their operations even after the lapse of sufficient time. Although the licence conditions contained provisions for levying liquidated damages, the amounts involved are low and are not deterrent enough to oblige the service provider to commence operations/conduct its operations such that the spectrum is efficiently utilised. A new licensee having received initial start-up spectrum and not commencing its services results in the Government not receiving its due share of annual licence fee and spectrum charges as a percentage of the AGR. As such, inefficient usage of spectrum leads to loss of government revenues. The Authority is of the firm opinion that such possible loss of revenue needs to be plugged. And in this direction, the Authority proposes to levy the license fee and spectrum usage charges as a percentage of a presumptive adjusted gross revenue or the actual adjusted gross revenue, whichever is higher” (Para 2.131).*

The Authority having examined the amount of ‘minimum AGR’ recommended that, w.e.f. 1.4.2010, the licence fee and the spectrum charges payable by each licensee shall be on actual AGR, subject to a minimum AGR as shown in Table 2.13 **(at page 93 of the May 2010 recommendations)**.

The licence agreement enables the Government to modify the licence conditions. Failure to modify the roll out conditions will result in the continuation of a situation where a licensee can keep the spectrum unutilised thereby denying both the people and the Government of the advantages that are due from the assignment of the spectrum to such licensee.

18. **Group-III:** There are 5 cases categorised as 'D1' in TRAI recommendations Dated 18<sup>th</sup> November, 2010, where the Service Providers had not complied with the roll out obligations, but the period of 52 weeks from the due date of compliance had not expired at the time when the recommendations were sent. TRAI had recommended that liquidated damages may be imposed as per licence conditions. It was also recommended that the expiry of 52 weeks is due to take place shortly and as such these cases need to be monitored closely. The service providers listed under this Group were M/s Videocon in four service areas namely Assam, J&K, Kolkata and North East (Details at Annexure-III) and M/s S. Tel in J&K service area. DoT has already issued letters to these Service Providers for imposition of LD. As 52 weeks from date of allocation of spectrum have now expired, these cases have now come under 'D2' category, because as per data available with TRAI, these licensees have not offered their services to the subscribers even after completion of 52 weeks from the due date of compliance of roll-out obligations.
19. **The Authority recommends that the licenses given to M/s Videocon in Assam, J&K, Kolkata and North East may also be cancelled as per licence conditions besides imposition of Liquidated Damages.** The case of M/s S.Tel has been dealt in the Para below.
20. In the case of M/s S-Tel in J&K service area, spectrum has been allocated in only 2 districts and as per the Amendment to the Unified

Access Services (UAS) Licence Agreement for Roll-Out Obligations dated 10<sup>th</sup> February 2009, in non-metro service areas, the licensee shall ensure that in first phase of roll out obligations, at least 10% of DHQs in non-metro service areas, where start up spectrum has been allocated, are covered within one year of such spectrum and for calculation of number of DHQs to be covered, the fraction which comes to 0.5 or above shall be rounded off to the next whole number and if the fraction is less than 0.5 it shall be ignored. In the case of M/s S.Tel, 10% of two districts where the spectrum has been assigned come out to be 0.2 which is a fraction less than 0.5 which implies that the Service Provider is not obliged to roll-out its network/services in the first year with the present spectrum assignment. It is learnt that M/s S-Tel has filed a petition with the Hon'ble TDSAT against imposition of LD by DoT, in this service area. **As the matter is *subjudice*, the Authority does not consider it appropriate to make any recommendation in this case. DoT may examine this matter separately at the appropriate time and take action in accordance with law.**

21. **Group-IV:** This Group consists of the balance 66 licenses.

No action is contemplated by either TRAI or DOT in respect of 4 cases where spectrum was not allotted and no action is therefore called for.

In respect of the 10 cases which were in the 'A1' category, the Authority had recommended that no action was necessary. DOT is in agreement in all cases except one case of Sistema Shyam in Kerala where it issued a show cause notice for cancellation. Since this action is based on the actual number of districts, information regarding which was not originally available with TRAI, the Authority agrees with the DOT.

In respect of Aircel (Kolkata), the Authority had classified it under 'C1' category i.e. where the rollout of network (in terms of BTS/ subscribers)

was satisfactory and it was recommended that liquidated damages may be imposed as per licence conditions. It was noted that strictly going by the licence conditions, the license had to be cancelled. But since the rollout was satisfactory, the Authority desired that DOT may examine legally whether the license can be continued to avoid inconvenience to public. DOT chose to issue a show cause notice for cancellation, based on the date of registration available with the TERM cell, which is different from what the licensee reported to TRAI. Under the circumstances, the Authority agrees with the DOT.

This leaves 51 cases which were categorised under 'B1' category by TRAI, where the licensees had complied with the roll out obligations but with delay up to 52 weeks. Liquidated damages were recommended to be imposed as per licence conditions. DOT imposed liquidated damages in respect of 45 cases. Besides, in 3 of these 45 cases, DOT also issued show cause notice for cancellation of licenses. These are M/s. Sistema Shyam in West Bengal, M/s Vodafone in North East and M/s Aircel in Andhra Pradesh. In the first two cases, the difference is based on the actual number of Districts while in the third case, the difference is on account of calculation of the delay as per licence conditions. The recommendation of the Authority was based on the information as furnished by the licensees. Since DOT has taken action on the basis of information available with it, the Authority agrees with the action taken by DOT.

In 6 cases, DOT determined that imposition of LD was not warranted on account of SACFA delay etc. In its letter dated 6<sup>th</sup> May, 2011, DoT informed that the calculation of LD for the delay in roll-out was carried out on the basis of:

- i. Consideration of average SACFA delay
- ii. Calculation of the number of weeks as per license condition

- iii. Difference in date of registration with the TERM cells and date of allocation of spectrum
22. It may be noted that TRAI had sent its recommendations for imposition of Liquidated Damages (LD), based on the information supplied by the licensees. Information furnished by the licensees was also sent to DoT along with TRAI's recommendations. While it recommended the imposition of LD, it was for DOT to calculate the amounts to be charged. In their submission, none of the licensees had reported information relating to SACFA delay. Regarding the difference in the date of registration with the TERM cells, it is again mentioned that the dates given in the analysis sheets were based on the data supplied by the concerned licensee. **The Authority, therefore, would like to leave it to the DOT to calculate the amount of liquidated damages to be imposed, after duly taking into account all factors.**
23. Even without considering the Group-II cases, which require legal examination, the number of licences that are liable to be cancelled would be 53 in all, comprising of the 43 cases of Group-I, the 4 cases mentioned in Group-III and the 6 cases of Group-IV. Consequent upon the cancellation of these licences, the amount of spectrum that is likely to be released will be of the order of 210.4 MHz (Annexure-IV), ranging from 4.4 MHz to 20.1 MHz in different Circles. This would release additional spectrum and the resultant situation is given in Annexure VA and Annexure -VB.
24. In this context, it may be recalled that the Authority, in its recommendations of May,2010 had in Para 3.28 (at page 129) recommended that-

*“.....the limit on spectrum to be assigned to a service provider will be 2X8MHz for all service areas other than in Delhi and Mumbai where it will be 2X10MHz. Similarly for CDMA spectrum the Authority recommends that the limit on spectrum will be 2X5MHz for all service areas and 2X6.25 MHz in the Metro areas of Delhi and Mumbai. As concluded in chapter-II, the contracted Spectrum as per the license is 6.2MHz/5 MHz (GSM/CDMA)*

*only. Therefore, even though the service provider will be assigned spectrum upto the prescribed limit, Spectrum assigned beyond contracted amount will be paid for at the current price. This will be equally applicable to the service providers who are already holding the excess spectrum and those who will be assigned beyond the contracted amount in future”.*

25. Further, in its recommendations on ‘The 2010 Value of Spectrum in 1800 MHz band’ dated 8<sup>th</sup> February 2011, had recommended that “...*the charging of spectrum in 1800 MHz band beyond 6.2 MHz on the basis of these estimated figures, should be unambiguously subject to the condition that the final price could be suitably modified as described in the preceding paragraph” (Para 9 at page v of the 8<sup>th</sup> February 2011 recommendations).* Para 8 reads as follows:

*“.....in certain LSAs, spectrum would be, post-cancellation, available even after meeting the requirements of contracted spectrum as well as ‘prescribed limit’ of 8 MHz (10 MHz in Mumbai and Delhi) recommended by the Authority in Para 3.28 of the May 2010 recommendations. In that event, it should be possible for the Government to auction the surplus spectrum and treat this auction price as the relevant price of spectrum beyond 6.2 MHz for the given LSA, provided the auction is conducted within 12 months of the decision by the Government. Ideally, the value of spectrum can only be applied in a given licensed service area. However, insofar as LSAs where auction is not feasible for lack of surplus spectrum, Government could consider appropriately modifying the estimated figure of a LSA to reflect the market price based on the auction price in the LSAs where auction was conducted”.*

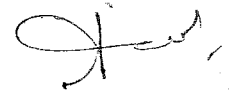
### **Roll Out for Dual Technology Licensees**

26. In addition to the above, DoT, in its letter dated 6<sup>th</sup> May 2011 has referred to the issue of amendment of the dual technology license for contingent roll out obligations. Its view is that the ‘in-principle approval letter(s) and amendment(s) to CMTS/UASL licenses contain provision for roll-out obligations’. As such, in opinion of DoT, there is no need for any further amendment to the UAS license.

27. In this context, in its recommendations on 'Review of license terms and conditions and capping of number of access providers', dated 28<sup>th</sup> August, 2007, TRAI had recommended that in order to ensure that the additional spectrum is efficiently and properly utilized in a timely manner, the dual technology spectrum holder should be required to fulfil the contingent rollout obligation (Para 6.26). DoT vide its letter dated 8<sup>th</sup> Nov, 2007 had conveyed its acceptance of this recommendation of TRAI. Accordingly TRAI, vide its letter No.102-6/2008-MN/54 dated 15<sup>th</sup> May, 2008, had requested DoT to amend the license for prescribing the contingent roll out obligations in respect of such licensees. TRAI was of the opinion that specific mention of roll-out obligations and liquidated damages for GSM services may have to be incorporated in clause 34 & 35 of the license agreement.
28. On 10<sup>th</sup> June, 2009, TRAI had sought compliance of roll-out obligations from M/s Reliance (RCL) and M/s Tata in the service areas where they were assigned additional spectrum in GSM technology. M/s RCL in its reply informed TRAI that "As per license amendment, the roll out obligations were to be carried out after the effective date of migration to UAS Licence. In our case, the migration happened in Nov, 2003". Similarly, M/s Tata replied that "...as the mentioned spectrum has been allocated to us under GSM (dual Technology), thus the condition of roll out obligation is not applicable". Replies of both these service providers were brought to the notice of DoT on 3<sup>rd</sup> March, 2010 with a request to amend the license conditions in respect of licensees having dual technology spectrum. DoT was further reminded vide TRAI's letter dated 18<sup>th</sup> Nov, 2010. DoT has now mentioned that in its opinion there is no further need to amend the license. In the opinion of DoT, the roll-out obligation using dual-technology has already been mandated in the in-principle approval letter.



29. The Authority has examined the matter carefully. The intention of the DOT indicated above does not seem to be shared by the holders of the dual technology spectrum as reflected from their replies extracted above. In order to ensure that there is no scope for interpretation, **TRAI reiterates that the CMTS/UAS license needs to be amended for incorporating contingent roll-out obligation for the dual technology spectrum holders.**



(R.K. Arnold)  
Secretary, TRAI

**Annexure-I to the Note**

**Statement showing the status in respect of the 145 licensees**

| Service Providers                           | Category |    |    |    |    |    |    |    |                |     | Total |
|---|----------|----|----|----|----|----|----|----|----------------|-----|-------|
|   | A1       | A2 | B1 | B2 | C1 | C2 | D1 | D2 | Cancel license | Nil |       |
| Aircel                                      |          |    | 8  | 1  | 1  | 4  |    |    |                |     | 14    |
| Etisalat                                    |          |    |    | 13 |    |    |    | 2  |                |     | 15    |
| Loop  |          | 1  |    | 5  |    |    |    | 14 |                | 1   | 21    |
| Sistema-Shyam                               | 1        |    | 9  | 1  |    |    |    | 10 |                |     | 21    |
| S-Tel                                       |          |    | 5  |    |    |    | 1  |    |                |     | 6     |
| TTSL  |          |    | 3  |    |    |    |    |    |                |     | 3     |
| Uninor                                      |          |    | 13 |    |    |    |    | 8  |                | 1   | 22    |
| Videocon                                    |          |    | 6  | 10 |    |    | 4  |    |                | 1   | 21    |
| Vodafone                                    | 3        |    | 4  |    |    |    |    |    |                |     | 7     |
| Total (as per letter dated 18.11.2010 )     | 4        | 1  | 48 | 30 | 1  | 4  | 5  | 34 | 0              | 3   | 130   |
| Idea/Spice (as per letter dated 22.12.2010) | 6        |    | 3  |    |    |    |    |    | 5              | 1   | 15    |
| Grand Total                                 | 10       | 1  | 51 | 30 | 1  | 4  | 5  | 34 | 5              | 4   | 145   |

**Group-I**  
**Cases falling in 'D2' category of TRAI letter dated 18.11.2010**

**Annexure II to the Note**

| Sr. No. | Name of the service area | Name of licensee  | Date of Startup Spectrum allocation | Average Delay in granting the SACFA clearance in number of days | 1st year roll out date = date of allocation of startup spectrum + Average SACFA delay +1 year | Date of registration by TERM for successful testing of last DHQ offered | Category as per TRAI Recommendation | Status after 2 years of allocation of spectrum |   |                                     | TRAI Remarks   |
|---------|--------------------------|-------------------|-------------------------------------|---|---|---|-------------------------------------|--|---|-------------------------------------|--|
|         |                          |                   |                                     |   |   |   |                                     | Tariff plan filed with TRAI                    | AGR from wireline / wireless service reported to TRAI | No. of subscribers reported to TRAI |  |
| 1       | Andhra Pradesh           | Loop Telecom Ltd. | 27 <sup>th</sup> May 2008           | 18  | 13 <sup>th</sup> Jun 2009   | 31 <sup>st</sup> Jul 2009   | D2                                  | NO   | NIL   | NO                                  | Services not started by licensee even after 52 weeks from due date; cancellation recommended |
| 2       | Assam*                   | Loop Telecom Ltd. | 22 <sup>nd</sup> Dec 2008           | 28  | 18 <sup>th</sup> Jan 2010   | 19 <sup>th</sup> Feb 2010   | D2                                  | YES (on 5 <sup>th</sup> Aug 2010)              | NIL   | 0                                   |  |
| 3       | Bihar                    | Loop Telecom Ltd. | 3 <sup>rd</sup> Oct 2008            | 11  | 13 <sup>th</sup> Oct 2009   | 18 <sup>th</sup> Dec 2009   | D2                                  | NO   | NIL   | NO                                  |  |
| 4       | Gujarat                  | Loop Telecom Ltd. | 9 <sup>th</sup> Mar 2009            | 25  | 2 <sup>nd</sup> Apr 2010  | 23 <sup>rd</sup> Mar 2010   | D2                                  | NO   | NIL   | NO                                  |  |
| 5       | Himachal Pradesh         | Loop Telecom Ltd. | 4 <sup>th</sup> Dec 2008            | 58  | 30 <sup>th</sup> Jan 2010   | 26 <sup>th</sup> Feb 2010   | D2                                  | NO   | NIL   | NO                                  |  |
| 6       | Jammu & Kashmir          | Loop Telecom Ltd. | 24 <sup>th</sup> Dec 2008           | 7   | 30 <sup>th</sup> Dec 2009   | 15 <sup>th</sup> Mar 2010   | D2                                  | NO   | NIL   | NO                                  |  |

| Sr. No. | Name of the service area      | Name of licensee  | Date of Startup Spectrum allocation | Average Delay in granting the SACFA clearance in number of days | 1st year roll out date = date of allocation of startup spectrum + Average SACFA delay +1 year | Date of registration by TERM for successful testing of last DHQ offered | Category as per TRAI Recommendation | Status after 2 years of allocation of spectrum |  |                                     | TRAI Remarks   |
|---------|-------------------------------|-------------------|-------------------------------------|---|---|---|-------------------------------------|--|--|-------------------------------------|--|
|         |                               |                   |                                     |   |   |   |                                     | Tariff plan filed with TRAI                    | AGR from wiredline / wireless service reported to TRAI | No. of subscribers reported to TRAI |  |
| 7       | Karnataka                     | Loop Telecom Ltd. | 30 <sup>th</sup> May 2008           | 16  | 14 <sup>th</sup> Jun 2009   | 11 <sup>th</sup> Aug 2009   | D2                                  | NO   | NIL  | NO                                  | Services not started by licensee even after 52 weeks from due date; cancellation recommended |
| 8       | Kerala                        | Loop Telecom Ltd. | 15 <sup>th</sup> May 2008           | 0   | 14 <sup>th</sup> May 2009   | 22 <sup>nd</sup> July 2009  | D2                                  | NO   | NIL  | NO                                  |  |
| 9       | Maharashtra                   | Loop Telecom Ltd. | 14 <sup>th</sup> Nov 2008           | 30  | 13 <sup>th</sup> Dec 2009   | 1 <sup>st</sup> Jan 2010  | D2                                  | NO   | NIL  | NO                                  |  |
| 10      | North East#                   | Loop Telecom Ltd. | 23 <sup>rd</sup> Dec 2008           | 14  | 5 <sup>th</sup> Jan 2010  | 18 <sup>th</sup> Mar 2010   | D2                                  | YES (on 5 <sup>th</sup> Aug 2010)              | NIL  | 0                                   |  |
| 11      | Tamilnadu (including Chennai) | Loop Telecom Ltd. | 22 <sup>nd</sup> Apr 2008           | 0   | 21 <sup>st</sup> Apr 2009   | 28 <sup>th</sup> May 2009   | D2                                  | NO   | NIL  | NO                                  |  |
| 12      | Uttar Pradesh (East)          | Loop Telecom Ltd. | 21 <sup>st</sup> Jan 2009           | 38  | 27 <sup>th</sup> Feb 2010   | 20 <sup>th</sup> Apr 2010   | D2                                  | NO   | NIL  | NO                                  |  |
| 13      | Uttar Pradesh (West)          | Loop Telecom Ltd. | 26 <sup>th</sup> Dec 2008           | 5   | 30 <sup>th</sup> Dec 2009   | 2 <sup>nd</sup> Mar 2010  | D2                                  | NO   | NIL  | NO                                  |  |

| Sr. No. | Name of the service area | Name of licensee                | Date of Startup Spectrum allocation | Average Delay in granting the SACFA clearance in number of days | 1st year roll out date = date of allocation of startup spectrum + Average SACFA delay +1 year | Date of registration by TERM for successful testing of last DHQ offered   | Category as per TRAI Recommendation | Status after 2 years of allocation of spectrum |  |                                     | TRAI Remarks   |
|---------|--------------------------|---------------------------------|-------------------------------------|---|---|---|-------------------------------------|--|--|-------------------------------------|--|
|         |                          |                                 |                                     |   |   |   |                                     | Tariff plan filed with TRAI                    | AGR from wiredline / wireless service reported to TRAI | No. of subscribers reported to TRAI |  |
| 14      | West Bengal              | Loop Telecom Ltd.               | 9 <sup>th</sup> Jan 2009            | NA  | 8 <sup>th</sup> Jan 2010  | Date of Regn. 27 <sup>th</sup> Jan 2010 (not yet tested by TERM)<br>Date of Reporting 20 <sup>th</sup> Dec 2010 | D2                                  | NO   | NIL  | NO                                  | Services not started by licensee even after 52 weeks from due date; cancellation recommended |
| 15      | Gujarat                  | Sistema Shyam TeleServices Ltd. | 29 <sup>th</sup> May 2008           | 0   | 28 <sup>th</sup> May 2009   | 23 <sup>rd</sup> Feb 2010   | D2                                  | NO   | NIL  | NO                                  |  |
| 16      | Himachal Pradesh         | Sistema Shyam TeleServices Ltd. | 11 <sup>th</sup> Apr 2008           | 58  | 7 <sup>th</sup> Jun 2009  | 7 <sup>th</sup> Oct 2009  | D2                                  | NO   | NIL  | NO                                  |  |
| 17      | Jammu & Kashmir          | Sistema Shyam TeleServices Ltd. | 3 <sup>rd</sup> April 2008          | 58  | 30 <sup>th</sup> May 2009   | 30 <sup>th</sup> Dec 2009   | D2                                  | NO   | NIL  | NO                                  |  |

| Sr. No. | Name of the service area | Name of licensee                | Date of Startup Spectrum allocation | Average Delay in granting the SACFA clearance in number of days | 1st year roll out date = date of allocation of startup spectrum + Average SACFA delay +1 year | Date of registration by TERM for successful testing of last DHQ offered | Category as per TRAI Recommendation | Status after 2 years of allocation of spectrum |  |                                     | TRAI Remarks   |
|---------|--------------------------|---------------------------------|-------------------------------------|---|---|---|-------------------------------------|--|--|-------------------------------------|--|
|         |                          |                                 |                                     |   |   |   |                                     | Tariff plan filed with TRAI                    | AGR from wiredline / wireless service reported to TRAI | No. of subscribers reported to TRAI |  |
| 18      | Madhya Pradesh           | Sistema Shyam TeleServices Ltd. | 11 <sup>th</sup> April 2008         | 0   | 10 <sup>th</sup> April 2009   | 9 <sup>th</sup> Oct 2009  | D2                                  | NO   | NIL  | NO                                  | Services not started by licensee even after 52 weeks from due date; cancellation recommended |
| 19      | North East               | Sistema Shyam TeleServices Ltd. | 3 <sup>rd</sup> April 2008          | 56  | 28 <sup>th</sup> may 2009   | 12 <sup>th</sup> Mar 2010   | D2                                  | NO   | NIL  | NO                                  |  |
| 20      | Orissa                   | Sistema Shyam TeleServices Ltd. | 29 <sup>th</sup> May 2008           | 0   | 28 <sup>th</sup> may 2009   | 9 <sup>th</sup> Nov 2009  | D2                                  | NO   | NIL  | NO                                  |  |
| 21      | Punjab                   | Sistema Shyam TeleServices Ltd. | 25 <sup>th</sup> Jul 2008           | 0   | 24 <sup>th</sup> Jul 2009   | 3 <sup>rd</sup> Nov 2009  | D2                                  | NO   | NIL  | NO                                  |  |
| 22      | Uttar Pradesh (East)     | Sistema Shyam TeleServices Ltd. | 11 <sup>th</sup> April 2008         | 18  | 25 <sup>th</sup> Apr 2009   | 10 <sup>th</sup> Dec 2009   | D2                                  | NO   | NIL  | NO                                  |  |

| Sr. No. | Name of the service area | Name of licensee                   | Date of Startup Spectrum allocation | Average Delay in granting the SACFA clearance in number of days | 1st year roll out date = date of allocation of startup spectrum + Average SACFA delay +1 year | Date of registration by TERM for successful testing of last DHQ offered | Category as per TRAI Recommendation | Status after 2 years of allocation of spectrum |  |                                     | TRAI Remarks   |
|---------|--------------------------|------------------------------------|-------------------------------------|---|---|---|-------------------------------------|--|--|-------------------------------------|--|
|         |                          |                                    |                                     |   |   |   |                                     | Tariff plan filed with TRAI                    | AGR from wiredline / wireless service reported to TRAI | No. of subscribers reported to TRAI |  |
| 23      | Uttar Pradesh (West)     | Sistema Shyam TeleServices Ltd.    | 11 <sup>th</sup> April 2008         | 19  | 1 <sup>st</sup> may 2009  | 26 <sup>th</sup> Oct 2009   | D2                                  | NO   | NIL  | NO                                  | Services not started by licensee even after 52 weeks from due date; cancellation recommended |
| 24      | Assam                    | Unitech Wireless (East) Pvt. Ltd.  | 22 <sup>nd</sup> Dec 2008           | 0   | 21 <sup>st</sup> Dec 2009   | 7 <sup>th</sup> Sept 2010   | D2                                  | NO   | NIL  | NO                                  |  |
| 25      | North East               | Unitech Wireless (East) Pvt. Ltd.  | 23 <sup>rd</sup> Dec 2008           | 17  | 8 <sup>th</sup> Jan 2010  | 23 <sup>rd</sup> Sep 2010   | D2                                  | NO   | NIL  | NO                                  |  |
| 26      | Haryana                  | Unitech Wireless (North) Pvt. Ltd. | 4 <sup>th</sup> Dec 2008            | 1   | 4 <sup>th</sup> Dec 2009  | 22 <sup>nd</sup> Jul 2010   | D2                                  | NO   | NIL  | NO                                  |  |
| 27      | Himachal Pradesh         | Unitech Wireless (North) Pvt. Ltd. | 4 <sup>th</sup> Dec 2008            | 13  | 16 <sup>th</sup> Dec 2009   | 15 <sup>th</sup> Jun 2010   | D2                                  | NO   | NIL  | NO                                  |  |

| Sr. No. | Name of the service area | Name of licensee                   | Date of Startup Spectrum allocation | Average Delay in granting the SACFA clearance in number of days | 1st year roll out date = date of allocation of startup spectrum + Average SACFA delay +1 year | Date of registration by TERM for successful testing of last DHQ offered | Category as per TRAI Recommendation | Status after 2 years of allocation of spectrum |  |                                     | TRAI Remarks   |
|---------|--------------------------|------------------------------------|-------------------------------------|---|---|---|-------------------------------------|--|--|-------------------------------------|--|
|         |                          |                                    |                                     |   |   |   |                                     | Tariff plan filed with TRAI                    | AGR from wiredline / wireless service reported to TRAI | No. of subscribers reported to TRAI |  |
| 28      | Jammu & Kashmir          | Unitech Wireless (North) Pvt. Ltd. | 24 <sup>th</sup> Dec 2008           | 0   | 23 <sup>rd</sup> Dec 2009   | 21 <sup>st</sup> Sept 2010  | D2                                  | NO   | NIL  | NO                                  | Services not started by licensee even after 52 weeks from due date; cancellation recommended |
| 29      | Punjab                   | Unitech Wireless (North) Pvt. Ltd. | 10 <sup>th</sup> Sep 2008           | 2   | 11 <sup>th</sup> Sep 2009   | 12 <sup>th</sup> July 2010  | D2                                  | NO   | NIL  | NO                                  |  |
| 30      | Rajasthan                | Unitech Wireless (North) Pvt. Ltd. | 23 <sup>rd</sup> Dec 2008           | 14  | 5 <sup>th</sup> Jan 2010  | 29 <sup>th</sup> July 2010  | D2                                  | NO   | NIL  | NO                                  |  |
| 31      | Madhya Pradesh           | Unitech Wireless (West) Pvt. Ltd.  | 28 <sup>th</sup> Aug 2008           | 1   | 28 <sup>th</sup> Aug 2009   | 5 <sup>th</sup> Aug 2010  | D2                                  | NO   | NIL  | NO                                  |  |

\* - Loop in Assam has reported zero subscriber as on 31<sup>st</sup> Dec 2010 and 62 subscribers as on 31<sup>st</sup> Mar 2011

# - Loop in North East has reported zero subscriber as on 31<sup>st</sup> Dec 2010 and 5 subscribers as on 31<sup>st</sup> Mar 2011



**Group-III**

**Cases in 'D1' category as per TRAI letter dated 18.11.2010**

**Annexure III to the Note**

| Sr. No. | Name of the service area | Name of licensee                   | Date of Startup Spectrum allocation | Average Delay in granting the SACFA in number of days | 1st year roll out date = date of allocation of startup spectrum+ Average SACFA delay +1 year | Date of registration by TERM for successful testing of last DHQ offered | Status after 2 years of allocation of spectrum |  |                                     | TRAJ Remarks   |
|---------|--------------------------|------------------------------------|-------------------------------------|---|--|---|--|--|-------------------------------------|--|
|         |                          |                                    |                                     |   |  |   | Tariff plan filed with TRAJ                    | AGR from wiredline / wireless service reported to TRAJ | No. of subscribers reported to TRAJ |  |
| 1       | Assam                    | Videocon Telecom municatio ns Ltd. | 22 <sup>nd</sup> Dec 2008           | 14  | 4 <sup>th</sup> Jan 2010   | 13 <sup>th</sup> Dec 2010   | NO   | NIL  | NO                                  | Services not started by licensee even after 52 weeks from due date; cancellation recommended |
| 2       | Jammu & Kashmir          | Videocon Telecom municati ons Ltd. | 24 <sup>th</sup> Dec 2008           | -   | 23 <sup>rd</sup> Dec 2009  | 20 <sup>th</sup> Dec 2010   | NO   | NIL  | NO                                  |  |
| 3       | Kolkata                  | Videocon Telecom municati ons Ltd. | 5 <sup>th</sup> Dec 2008            | 0   | 4 <sup>th</sup> Dec 2009   | 19 <sup>th</sup> Nov 2010   | NO   | NIL  | NO                                  |  |
| 4       | North East               | Videocon Telecom municati ons Ltd. | 23 <sup>rd</sup> Dec 2008           | -   | 22 <sup>nd</sup> Dec 2009  | 22 <sup>nd</sup> Dec 2010   | NO   | NIL  | NO                                  |  |

**Annexure IV to the Note**

**Possibility of vacation of spectrum (in MHz) where licenses are recommended for Cancellation**

| S.No. | Service Area       | Aircel/<br>Dishnet | Etisalat   | Idea       | Loop        | Sistema<br>Shyam | Spice       | Uninor      | Videocon    | Vodafone   | Total<br>Spectrum |           | Grand<br>Total |
|-------|--------------------|--------------------|------------|------------|-------------|------------------|-------------|-------------|-------------|------------|-------------------|-----------|----------------|
|       |                    |                    |            |            |             |                  |             |             |             |            | GSM               | CDMA      |                |
| 1     | AP                 | 4.4                |            |            | 4.4         |                  | 4.4         |             |             |            | 13.2              | 0         | 13.2           |
| 2     | Assam              |                    |            |            | 4.4         | 2.5              |             | 4.4         | 4.4         |            | 13.2              | 2.5       | 15.7           |
| 3     | Bihar              |                    |            |            | 4.4         |                  |             |             |             |            | 4.4               | 0         | 4.4            |
| 4     | Delhi              |                    | 4.4        |            |             |                  |             |             |             |            | 4.4               | 0         | 4.4            |
| 5     | Gujarat            | 4.4                |            |            | 4.4         | 2.5              |             |             |             |            | 8.8               | 2.5       | 11.3           |
| 6     | Haryana            | 4.4                |            |            |             |                  | 4.4         | 4.4         |             |            | 13.2              | 0         | 13.2           |
| 7     | HP                 |                    |            |            | 4.4         | 2.5              |             | 4.4         |             |            | 8.8               | 2.5       | 11.3           |
| 8     | J&K                |                    |            |            | 4.4         | 2.5              |             | 4.4         | 4.4         |            | 13.2              | 2.5       | 15.7           |
| 9     | Karnataka          |                    |            | 4.4        | 4.4         |                  |             |             |             |            | 8.8               | 0         | 8.8            |
| 10    | Kerala             |                    |            |            | 4.4         | 2.5              |             |             |             |            | 4.4               | 2.5       | 6.9            |
| 11    | Kolkata            | 4.4                |            |            |             |                  |             |             | 4.4         |            | 8.8               | 0         | 8.8            |
| 12    | Madhya<br>Pradesh  | 4.4                |            |            |             | 2.5              |             | 4.4         |             |            | 8.8               | 2.5       | 11.3           |
| 13    | Maharashtra        |                    |            |            | 4.4         |                  | 4.4         |             |             |            | 8.8               | 0         | 8.8            |
| 14    | Mumbai             |                    | 4.4        |            |             |                  |             |             |             |            | 4.4               | 0         | 4.4            |
| 15    | NE                 |                    |            |            | 4.4         | 2.5              |             | 4.4         | 4.4         | 4.4        | 17.6              | 2.5       | 20.1           |
| 16    | Orissa             |                    |            |            |             | 2.5              |             |             |             |            | 0                 | 2.5       | 2.5            |
| 17    | Punjab             | 4.4                |            | 4.4        |             | 2.5              |             | 4.4         |             |            | 13.2              | 2.5       | 15.7           |
| 18    | Rajasthan          | 4.4                |            |            |             |                  |             | 4.4         |             |            | 8.8               | 0         | 8.8            |
| 19    | TN incl<br>Chennai |                    |            |            | 4.4         |                  |             |             |             |            | 4.4               | 0         | 4.4            |
| 20    | UP-E               |                    |            |            | 4.4         | 2.5              |             |             |             |            | 4.4               | 2.5       | 6.9            |
| 21    | UP-W               |                    |            |            | 4.4         | 2.5              |             |             |             |            | 4.4               | 2.5       | 6.9            |
| 22    | West Bengal        |                    |            |            | 4.4         | 2.5              |             |             |             |            | 4.4               | 2.5       | 6.9            |
|       |                    | <b>30.8</b>        | <b>8.8</b> | <b>8.8</b> | <b>61.6</b> | <b>30</b>        | <b>13.2</b> | <b>35.2</b> | <b>17.6</b> | <b>4.4</b> | <b>180.4</b>      | <b>30</b> | <b>210.4</b>   |

**Annexure V-A to the Note**

| Status of availability of spectrum with the service providers in various service areas after cancellation of licenses (GSM) |             |                        |                  |                    |    |   |     |     |     |   |      |      |      |   |                            |
|---|-------------|------------------------|------------------|--------------------|----|---|-----|-----|-----|---|------|------|------|---|----------------------------|
| S.No  | Circle      | Available GSM Spectrum | No. of Operators | Operators with MHz |    |   |     |     |     | Additionally required spectrum for quantum upto (MHz) |      |      |      | status of Spectrum allocated to operators | Balance available spectrum |
|   |             |                        |                  | 12.4               | 10 | 8 | 6.2 | 4.4 | Nil | 4.4   | 6.2  | 8    | 10   |   |                            |
| 1   | Delhi       | 65.2                   | 11               | 1                  | 2  | 1 |     | 2   | 5   | 22  | 34.6 | 47.2 | 63.2 | 49.2                                      | 16                         |
| 2   | Mumbai      | 77.4                   | 10               | 1                  | 3  |   |     | 6   |     |   | 10.8 | 21.6 | 33.6 | 68  | 9.4                        |
| 3   | Kolkata     | 83.4                   | 8                |                    | 2  | 1 | 1   | 4   |     |   | 7.2  | 16.2 |      | 51.6                                      | 31.8                       |
| 4   | Maharashtra | 75.4                   | 10               |                    | 2  | 1 | 1   | 6   |     |   | 10.8 | 23.4 |      | 60.6                                      | 14.8                       |
| 5   | Gujarat     | 64.8                   | 9                |                    | 1  | 1 | 2   | 5   |     |   | 9    | 21.6 |      | 51.6                                      | 13.2                       |
| 6   | AP          | 84.4                   | 9                |                    | 2  | 1 | 1   | 5   |     |   | 9    | 19.8 |      | 56.2                                      | 28.2                       |
| 7   | Karnataka   | 81.2                   | 10               |                    | 2  | 1 | 1   | 6   |     |   | 10.8 | 23.4 |      | 60.6                                      | 20.6                       |
| 8   | Tamil Nadu  | 92.4                   | 10               |                    | 3  | 1 |     | 6   |     |   | 10.8 | 21.6 |      | 62.6                                      | 29.8                       |
| 9   | Kerala      | 89.2                   | 10               |                    | 1  | 1 | 2   | 6   |     |   | 10.8 | 25.2 |      | 56.8                                      | 32.4                       |
| 10  | Punjab      | 64.6                   | 9                |                    |    | 2 | 2   | 5   |     |   | 9    | 21.6 |      | 50  | 14.6                       |
| 11  | Haryana     | 68.2                   | 9                |                    | 1  |   | 3   | 5   |     |   | 9    | 23.4 |      | 50.6                                      | 17.6                       |
| 12  | UP(West)    | 69.4                   | 10               |                    | 1  | 1 | 2   | 6   |     |   | 10.8 | 25.2 |      | 56.8                                      | 12.6                       |
| 13  | UP(East)    | 62.4                   | 10               |                    | 1  | 2 | 1   | 6   |     |   | 10.8 | 23.4 |      | 58  | 4.4                        |
| 14  | Rajasthan   | 67                     | 10               |                    |    | 2 | 2   | 6   |     |   | 10.8 | 25.2 |      | 55  | 12                         |
| 15  | M.P.        | 81                     | 9                |                    | 1  | 2 | 1   | 5   |     |   | 9    | 19.8 |      | 54.2                                      | 26.8                       |
| 16  | West Bengal | 57                     | 9                |                    |    | 1 | 3   | 5   |     |   | 9    | 23.4 |      | 48.6                                      | 8.4                        |
| 17  | H.P.        | 64                     | 9                |                    | 1  |   | 2   | 6   |     |   | 10.8 | 25.2 |      | 48.8                                      | 15.2                       |
| 18  | Bihar       | 66.8                   | 11               |                    | 2  | 1 |     | 8   |     |   | 14.4 | 28.8 |      | 62.4                                      | 4.4                        |
| 19  | Orissa      | 77.4                   | 11               |                    | 1  | 1 | 1   | 8   |     |   | 14.4 | 30.6 |      | 59.4                                      | 18                         |
| 20  | Assam       | 58.8                   | 7                |                    | 1  |   | 3   | 3   |     |   | 5.4  | 16.2 |      | 41.8                                      | 17                         |
| 21  | North East  | 60.2                   | 6                |                    | 1  |   | 2   | 3   |     |   | 5.4  | 14.4 |      | 35.6                                      | 24.6                       |
| 22  | J&K         | 55.8                   | 7                |                    |    | 1 | 1   | 5   |     |   | 9    | 19.8 |      | 36.2                                      | 19.6                       |

Note - In stray cases, Spectrum allocated varies from above tranches

**Annexure V-B to the Note**

| Status of availability of spectrum with the service providers in various service areas after cancellation of licenses (CDMA) |             |                  |                    |     |      |   |      |      |      |   |   |
|--|-------------|------------------|--------------------|-----|------|---|------|------|------|---|---|
| S.No.  | Circle      | No. of Operators | Operators with MHz |     |      | Additionally required spectrum for quantum upto (MHz) |      |      |      | status of Spectrum allocated to operators | Balance available spectrum <sup>#</sup> |
|  |             |                  | A                  | 2.5 | 3.75 | 5   | 2.5  | 3.75 | 5    |   |   |
| 1  | Delhi       | 4                | 1                  | 1   | 2    | -   | 1.25 | 3.75 | 8.75 | 16.25                                     | 1.25                                    |
| 2  | Mumbai      | 4                | 2                  | 0   | 2    | -   | 2.5  | 5    | 10   | 15  | 1.25                                    |
| 3  | Kolkata     | 4                | 2                  | 1   | 1    | -   | 2.5  | 6.25 |      | 13.75                                     | 2.5                                     |
| 4  | Maharashtra | 4                | 2                  | 0   | 2    | -   | 2.5  | 5    |      | 15  | 1.25                                    |
| 5  | Gujarat     | 3                | 1                  | 2   | 0    | -   | 1.25 | 5    |      | 10  | 7.5                                     |
| 6  | AP          | 4                | 2                  | 1   | 1    | -   | 2.5  | 6.25 |      | 13.75                                     | 0                                       |
| 7  | Karnataka   | 4                | 2                  | 1   | 1    | -   | 2.5  | 6.25 |      | 13.75                                     | 3.75                                    |
| 8  | Tamilnadu   | 4                | 3                  | 0   | 1    | -   | 3.75 | 7.5  |      | 12.5                                      | 2.5                                     |
| 9  | Kerala      | 3                | 0                  | 2   | 1    | -   | 0    | 2.5  |      | 12.5                                      | 5                                       |
| 10   | Punjab      | 4                | 2                  | 2   | 0    | -   | 2.5  | 7.5  |      | 12.5                                      | 3.75                                    |
| 11   | Haryana     | 4                | 2                  | 1   | 1    | -   | 2.5  | 6.25 |      | 13.75                                     | 3.75                                    |
| 12   | UP(West)    | 3                | 1                  | 1   | 1    | -   | 1.25 | 3.75 |      | 11.25                                     | 6.25                                    |
| 13   | UP(East)    | 3                | 1                  | 1   | 1    | -   | 1.25 | 3.75 |      | 11.25                                     | 5                                       |
| 14   | Rajasthan   | 4                | 1                  | 2   | 1    | -   | 1.25 | 5    |      | 15  | 0                                       |
| 15   | M.P.        | 3                | 2                  | 0   | 1    | -   | 2.5  | 5    |      | 10  | 6.25                                    |
| 16   | West Bengal | 3                | 2                  | 1   | 0    | -   | 2.5  | 6.25 |      | 8.75                                      | 7.5                                     |
| 17   | H.P.        | 3                | 3                  | 0   | 0    | -   | 3.75 | 7.5  |      | 7.5                                       | 10                                      |
| 18   | Bihar       | 4                | 2                  | 1   | 1    | -   | 2.5  | 6.25 |      | 13.75                                     | 3.75                                    |
| 19   | Orissa      | 3                | 2                  | 1   | 0    | -   | 2.5  | 6.25 |      | 8.75                                      | 8.75                                    |
| 20   | Assam       | 3                | 3                  | 0   | 0    | -   | 3.75 | 7.5  |      | 7.5                                       | 10                                      |
| 21   | North East  | 3                | 3                  | 0   | 0    | -   | 3.75 | 7.5  |      | 7.5                                       | 10                                      |
| 22   | J&K         | 3                | 3                  | 0   | 0    | -   | 3.75 | 7.5  |      | 7.5                                       | 7.5                                     |

**Note - In stray cases, Spectrum allocated varies from above tranches**

**# As per the carrier plan 14 carriers are available in 20 MHz band**